XIV
26

Justice of the Peace and Parish officer, vol. V

P. II

Year: 1845

Sub: Law and legislation/ Justice of the Peace and Parish officer

Place: London

WEST BENGAL SECRETARIAT LIBRARY

Process.

PROCESS is so called because it *proceeds* or issues forth in order to bring the defendant to answer the charge preferred against him; and signifies the writs or judicial means by which he is brought to answer. What.

As to process against witnesses, *see* "*Evidence*," Vol. II. p. 447.

As to process against jurors, *see* "*Jurors*," Vol. III.

As to process for contempt, *see* "*Attachment*," Vol. I.

Process before Indictment, not referrible to Appearance in Courts of Record. (*See post*, *titles*, "*Summons*," "*Warrant*," "*Search Warrant*," and *title*, "*Commitment*," Vol. I.)

Process after Indictment, and referrible to Appearance in Courts of Record.

I. *To compel an appearance*, p. 659 to 663.
II. *Of Outlawry for Non-appearance*, p. 663 to 666.
III. *Forms*, p. 666.

I. To compel an Appearance in a Court of Record.

By the commission of the peace, the justices in sessions have power to make and continue processes upon indictments against the persons indicted, until they can be taken, surrender themselves, or be outlawed. Process by the commission.

And by the 1 Edw. IV. c. 2, indictments and presentments taken in the sheriff's tourn shall be delivered to the next sessions, who may award process thereupon in like form as if they had been taken before themselves. Process or indictments taken in the tourn.

And the law also in several cases in express words directs process to be made by justices out of sessions; and in other cases by necessary implication; and where a statute doth give power to justices out of sessions to inquire, hear, and determine, there they may make process to cause the party to come and answer, otherwise they cannot proceed to hear and determine; and this may be either before or after presentment or indictment, as the several statutes do require: before presentment or indictment, it is called a *warrant*; after presentment or indictment, it is properly called *process*. (*Dalt. c.* 193, *p.* 471.) Process by justices out of sessions.

Commonly, an indictment, being but an accusation against a man, is of no force but only to put him to answer unto it. And hereof all process hath the name, because it *proceedeth*, or goeth out, upon former matter, either original or judicial. (*Lamb.* 519.) Process, what.

And it seemeth plain, from the nature of the thing, that there can be no need of process where the defendant is present in court, but only where he is absent. (2 *Haw. c.* 27; 1 *Chit. C. L.* 338.) No need of, if party be present.

The process ought to be in the name of the queen. And if it issue from the Queen's Bench, it ought to be under the teste of the chief justice. If it issue from any other court, there seems to be the same reason that it ought to be under the teste of the first in the commission. (2 *Haw. c.* 27, *s.* 8; 1 *Chit. C. L.* 339.) To be in queen's name.

Upon an indictment in sessions, (for a misdemeanor, not being a felony,) there must be fifteen days between the teste and return of the *venire*; but if the entry be by consent of parties, the *venire* may be returnable *immediatè*, and the trial be the same day. (*Anon.* 3 *Salk.* 371.) When returnable.

1. *To compel an Appearance in a Court of Record.*

Process for felony.

Process for misdemeanors, &c.

Process on an indictment for felony, by the 25 Edw. III. c. 14, is two *capiases*, and then an exigent. (*Hale's Sum.* 209; 2 *Haw. c.* 27, *s.* 115.)

The ordinary processes upon all indictments of trespass against the peace, or of other offences against penal statutes, not being felony, or a greater offence, are as follow: first, if the offender be absent, a *venire facias*, which is but in the nature of a summons to cause the party to appear, shall be awarded, except where other process is directed by some statute. (2 *Haw. c.* 27, *s.* 9.)

If it appear by the return of such *venire*, that the party hath lands in the county, whereby he may be distrained, the *distress infinite* shall be awarded from time to time till he do appear, and by force thereof he shall forfeit on every default so much as the sheriff shall return upon him in issues. But if a *nihil* be returned on such a *venire*, then three *capiases*, that is, a *capias*, *alias*, and *pluries*, shall issue. (2 *Haw. c.* 27, *s.* 10.)

Where the inhabitants of a parish are indicted or presented, the process is, first, a *venire*, then a *distringas*.

And see further, as to the different kinds of process, 1 *Chit. C. L.* 338.

When any person is charged with any offence (not being treason or felony) for which he may be prosecuted by indictment or information in K. B.; upon affidavit thereof, or on certificate of indictment, &c. being filed, any judge of the court may issue his warrant to apprehend the party; who shall be thereupon held to bail to answer the charge, or on failure of bail shall be committed: and if any person in custody for want of bail shall not plead in eight days after copy of indictment, &c., and notice to plead, are delivered at the gaol, the prosecutor may enter the plea of not guilty and proceed to trial.

The 48 Geo. III. c. 58, s. 1, enacts, "That whenever any person shall be charged with any offence for which he or she may be prosecuted by indictment or information in his majesty's court of King's Bench, not being treason or felony, and the same shall be made appear to any judge of the same court by affidavit, or by certificate of an indictment or information being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him or some other judge of the same court, or before some one of his majesty's justices of the peace, in order to his or her being bound to the king's majesty with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the said court in term time, or of one of the judges of the said court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said court, and shall continue in force until such person shall have been acquitted of such offence, or in case of conviction, shall have received judgment for the same, unless sooner ordered by the said court to be discharged; and that where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of *capias ad respondendum* issued out of the said court, is now detained, or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information aforesaid, cause an appearance, and also a plea of demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he or she shall thereupon, for the said space of eight days after such delivery of a copy of the indictment or information as aforesaid, neglect to cause an appearance, and also a plea or demurrer to be entered in the said court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon an affidavit being made and filed in the said court, of the delivery of a copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, or

turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said court authorized to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information, for such person, and such proceedings shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty, according to the usual course of the said court; and that if, upon the trial of such indictment or information, any defendant so committed and detained as aforesaid, shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly." (*See "Bail,"* Vol. I.)

1. *To compel an Appearance in a Court of Record.*

Party acquitted may be discharged.

It appears now to be the established practice, independently of this statute, upon an indictment found for a misdemeanor at the assizes or sessions, to issue a bench warrant, signed by a judge or justices of the peace, or two of the latter, to apprehend the defendant; and, when the assizes and sessions are over, the clerk of assize, and clerk of the peace respectively, will, on the application of the prosecutor, grant a certificate of the indictment having been found, upon which any judge of the Queen's Bench, or justice of the peace of the proper county, will grant a warrant for apprehending the defendant, and will oblige him to enter into recognizance to answer, or for want of sureties will commit him. (*See* 1 *Chit. C. L.* 339, and the various authorities there cited; also *post, title, "Warrant,"* Vol. VI.)

Bench warrants.

If a defendant appear to an indictment of felony, and afterwards before issue joined make an escape either from his bail or from prison, the common *capias, alias,* and *pluries,* shall be awarded against him, unless there had been an *exigent* before, in which case a new *exigent* shall be awarded. (2 *Haw. c.* 27, *s.* 19.)

Process on an escape.

By the 3 Edw. I. c. 14, the *exigent* shall not be awarded against accessories until the principals shall be attainted. (2 *Haw. c.* 27, *s.* 130.)

Process against accessories.

By the 8 Hen. VI. c. 10, on indictments for treason, felony, or trespass against persons dwelling in other counties than where the indictment is taken, before any *exigent* awarded, presently after the first writ of *capias* awarded and returned, another writ of *capias* shall be awarded, directed to the sheriff of the county whereof the person indicted was supposed to be conversant by the same indictment, returnable before the same justices or others before whom he is indicted, at a certain day continuing the space of three months from the date of the said last writ, where the counties are holden from month to month; and where they are holden from six weeks to six weeks he shall have four months, until the return of the same writ; by which writ of second *capias* it shall be commanded to the same sheriff to take the person indicted by his body, if he can be found within his bailiwick; and if he cannot be found within his bailiwick, that the said sheriff shall make proclamation in two counties before the return of the same writ, that he which is so indicted shall appear before the said justices or others in the county, liberty, or franchise where he is indicted, at the day contained in the said last writ of *capias,* to answer to the king of the felony, treason, or trespass, whereof he is so indicted; after which second writ of *capias* so served and returned, if he which is so indicted come not at the day of the same writ of *capias* returned, the *exigent* shall be awarded. And every *exigent* and outlawry otherwise awarded or pronounced shall be void.

Process in a foreign country.

And if any such indictment shall be removed by *certiorari,* then before the *exigent* awarded, presently after such first *capias* returned, another writ of *capias* shall be directed as before, returnable before the king in his bench.

But this shall not extend to indictments taken in the county of Chester.

1. *To compel an Appearance in a Court of Record.*

Also, if any person be indicted of felony or treason, and at the time of the same felony or treason supposed was conversant within the county whereof the indictment maketh mention, the like process shall be made against the person so indicted, as hath formerly been used; that is, without sending process into the other county.

But every person indicted in the form aforesaid, after he is duly acquit by verdict, shall have an action upon his case, against the procurer of such indictment; and if such procurer be attainted thereof, the plaintiff shall recover treble damages. Which seemeth to be upon account of the distance at which he is supposed to live from the place where he is indicted, and consequently his extraordinary trouble in that behalf.

Dwelling in other Counties.]—If the defendant be named of B. and late of C., there is no need of any *capias* to the sheriff of the county where C. lies, because it appears that the defendant is at present conversant at B. But if a defendant be named of no certain place at present, but only late of B. and late of C. and late of D., being all of them in counties different from that wherein the prosecution is commenced, a *capias* shall go to the sheriff of every one of those counties. (2 *Haw. c.* 27, *s.* 126.)

Shall be void.]—Not utterly void, but only voidable by writ of error. (*Id.*)

County of Chester.]—But it may be awarded into the counties palatine of Lancaster and Durham; and it seems that it shall be directed to and returned by the chancellor of Lancaster or bishop of Durham; and it hath been said that, if he will not return it, the *exigent* may be awarded as well as if he had returned it; because the court (of the sessions at least) cannot compel him to return it, and the prosecution might be unreasonably delayed, if the proceedings were to be stayed till he should return it. (2 *Haw. c.* 27, *s.* 125; *Hale's Sum.* 209, 210.)

Mr. *Marrow* saith that, by the equity of this statute, if a person indicted in one county is imprisoned in another, the justices may award a *habeas corpus* to remove him before themselves. (*Lamb.* 526.)

To be executed by the sheriff.

Concerning the execution of the process, it is laid down as a general rule, that wherever the king is a party to the suit (as he certainly is to all informations and indictments), the process ought to be executed by the sheriff himself, and not by the bailiff of any franchise, whether it have the clause *non omittas* or not, and whether the defendant be within a franchise or in the county at large; for the queen's prerogative shall be preferred to any franchise; but it is said, that this is to be intended only where in the grant of the franchise no mention is made of causes to which the king is a party. (2 *Haw. c.* 27, *s.* 17; and see further as to the execution of process, *post*, "*Warrant*," Vol. VI.)

Breaking open doors.

And if the party be in a house, if the doors be shut, and the sheriff (having given notice of his process) demand admittance, and the doors be not opened, he may break open the doors, and enter to take the offender. (2 *Hale*, 202; and see further, *post*, "*Warrant*," Vol. VI. p. 365.)

Demanding admittance.

In the execution of process against any man in the case of a misdemeanor, it is necessary to demand admittance, before the breaking of the outer door of the house can be legally justified; but it is questionable if it be so in the case of felony. (*Launock* v. *Brown*, 2 *B. & Ald.* 592; *Burdett* v. *Abbott*, 14 *East*, 163.)

Process on a Sunday.

By the 29 Car. II. c. 7, s. 6, no person on the Lord's day shall serve or cause to be served any writ, process, or warrant, order or judgment (except in cases of treason, felony, or breach of the peace); but the service thereof shall be void, and the person serving the same shall be liable to answer damages to the party grieved, in the same manner as if he had done it without any writ, process, warrant, order, or judgment at all. (*See* "*Lord's Day*," Vol. III.)

Process discontinued.

It seems to be agreed that every suit, whether civil or criminal, and also every process in such suit against jurors, ought to be properly continued from day to day from its commencement to its conclusion, without any the least gap or chasm; the suffering any such gap or chasm is properly

called a *discontinuance;* and the continuing the suit by improper process (as by a *capias* instead of a *distringas*), or by giving the parties an illegal day, is properly called a *miscontinuance;* and if the justices before whom the matter is depending do not come on the day to which it is continued, it is said to be *put without day*, and cannot be revived without a re-summons on re-attachment. (2 *Haw. c.* 27, *s.* 89, *et seq.*)

1. *To compel an Appearance in a Court of Record.*

Discontinuance.

Now, process may be discontinued several ways. As, 1. Where the second is not attested on the very same day on which the first is returnable. 2. Where there is a sessions intervening between the teste and the return of a *capias*, that the defendant may not be imprisoned an unreasonable time. But it is no objection to an *exigent* that it is not returnable the next sessions, because it must allow time for five county courts to be holden between its teste and return. 3. Where, after issue or demurrer, the court gives the party a day to a distant sessions, without making any continuance to that immediately following. 4. Where the sessions to which the suit is continued is adjourned, and the suit is not adjourned accordingly. 5. Where any of the parties are described in any continuance of the suit, whether on the roll, or by process by a name or addition variant from those in the original, though only in one letter. 6. Where a *venire* or *distringas* is issued, without any award on the roll to warrant them. (2 *Haw. c.* 27, *s.* 90, *et seq.*)

And it seems generally to be taken as an undoubted principle, that a discontinuance by suffering a total chasm in the proceedings, whether on the roll or in the process, by not giving a fresh continuance instantly upon the determination of the precedent, shall never be aided by any appearance of pleading over; but it is holden by the greater number of authorities that if the original be good, and the defendant present in court, he shall be compelled to answer to such original, let the process whereon he came in, or the execution of it, be ever so erroneous or defective, so that it never were discontinued; for the end of process is to compel an appearance, and the end being served, and a legal charge appearing against the defendant no way discontinued, the law will not so far regard a slip in the process, as to let the defendant out of court, in order only to have him brought in again in better form. (2 *Haw. c.* 27. *s.* 107.)

Process stayed by putting in bail.

The processes (as well of *capias* as of outlawry) may be stayed by a *supersedeas* issuing from other justices (out of sessions), testifying that the party hath come before them, and hath found sureties for his appearance to answer to the indictment or to pay his fine. (*Dalt. c.* 193.)

And it seemeth that even any one justice may bail persons indicted at the sessions for any offence under the degree of felony; for that the statutes relating specially to the power of justices in granting bail do not in this case seem to take away the power which one justice had before the making of the said statutes. (2 *Haw. c.* 15, *s.* 54; and see further as to bail, "*Bail*," Vol. I.)

Commitment.

As to the commitment, *see* "*Commitment for safe Custody*," Vol. I.

II. Of Outlawry for Non-Appearance.

Process of outlawry

Judgment of outlawry is given by the coroner, at the fifth county court, upon the party's not appearing to the *exigent*, which is a writ commanding the sheriff to cause the defendant (*exigi*) to be demanded from county court to county court until he be outlawed: and such judgment is entered thus: "Therefore, by the judgment of the coroners of our lady the queen of the county aforesaid he is outlawed." (2 *Haw. c.* 48, *s.* 21.)

Meaning of the word outlaw.

The word outlaw (*utlaghe*), *utlagatus*, cometh not immediately from the Latin *lex*, but is derived to us through the Saxon *laga*, which signifieth

2. *Outlawry.*

law. And a person outlawed signifies one that is out of the protection of the queen, and out of the aid of the law.

A woman outlawed.

And a man which is outlawed is called outlawed; but a woman which is outlawed is called waved, and not *utlagata;* for that women are not sworn in leets or tornes, as men at the age of twelve or more are; and therefore men may be called *utlagati*—that is *extra legem positi*, but women are *waviatæ*—that is, *derelictæ*, left out or not regarded, because they were not sworn to the law; wherein it is to be noted, that of ancient time a man was not said to be within the law that was not sworn to the law, which is intended of the oath of allegiance in the leet. (1 *Inst.* 122.)

Infant.

Hence it is that a man under the age of twelve years cannot be outlawed. (1 *Inst.* 122.)

For what outlawry may be.

Process of outlawry lies in all indictments of treason or felony, and on all returns of *rescous;* and also on all indictments of trespass with force and arms; and it seems probable that it lies on an indictment for conspiracy or deceit, or any other crime of a higher nature than a trespass with force and arms; but not on any indictment for a crime of an inferior nature. And it seems agreed that it lies not on any action on a statute, unless it be given by such statute, either expressly, as in the case of a *præmunire*, or impliedly, as where a recovery is given by an action wherein such process lay before, as on a writ of trespass for a forcible entry, on the 8 Hen. VI. c. 9, because the statute expressly gives a recovery by such a writ, and such process lies on it by the common law. (2 *Haw.* c. 27, *s.* 113.)

Proclamation of outlawry at the sessions, &c.

By the 31 Eliz. c. 3, in every action personal, wherein any *exigent* shall be awarded out of any court, one writ of proclamation shall be awarded out of the same court, having day of teste and return as the writ of *exigent* shall have, directed and delivereed of record to the sheriff where the defendant dwells; which writ of proclamation shall contain the effect of the action; and the sheriff shall make one proclamation in the open county court, and another at the general quarter sessions where the defendant dwells, and another a month at least before the *quinto exactus*, by virtue of the said writ of *exigent*, according to the recent statute of 7 Will. IV. & 1 Vict. c. 45, s. 2, by affixing on a Sunday, previously to the commencement of divine service, a written or printed, or partly written and partly printed, notice of such proclamation on or near to the doors of all the churches and chapels of that town or parish where the party to be outlawed at the time of the *exigent* awarded was dwelling, or if he was then dwelling out of any parish, then on or near to the doors of all the churches and chapels of the next adjoining parish in the same county. (*See R.* v. *Worcestershire Justices*, 4 *N. & P.* 440: 2 *Chit. Arch. Pract.* 929.)

Also, by the 4 & 5 Will. III. c. 22, s. 4, upon issuing any *exigent* out of any of the king's courts against any person for a criminal matter, before judgment or conviction, there shall also issue a writ of proclamation, bearing the same teste and return, where the person in the record of proceeding is mentioned to inhabit, according to the form of the 31 Eliz. c. 3, which writ of proclamation shall be delivered to the sheriff three months before the return of the same.

Return of the outlawry.

If there are two coroners in a county, or more, one may execute the writ, as in case of an *exigent*, but the return must be in the name of the coroners. (2 *Hale*, 56.)

And the return of the outlawry must be certain: it must show where the county court was held, and in what county; and must return the day, and year of the queen, to every *exactus*. (2 *Hale*, 203.)

Also, the sheriff's name and office must be subscribed to the return of the *exigent*. (2 *Hale*, 204.)

Capias utlagatum.

It is said that the justices in sessions cannot issue a *capias utlagatum*, but must return the record of the outlawry into the Queen's Bench, and the process of *capias utlagatum* shall issue. (2 *Hale*, 52.) But in *T.* 10 *Jac.* 1, the opinion of all the court of Common Pleas was, that if one be out-

2. *Outlawry.*

lawed before the justices of the peace on an indictment of felony, they may award a *capias utlagatum*, and so was the opinion of *Periam*, chief baron, and all the court of Exchequer; for they that have power to award process of outlawry have also power to award a *capias utlagatum*, as incident to their authority and jurisdiction. (12 *Rep.* 103.)

Consequences of outlawry.

If a person be outlawed at the suit of one man, all men shall take advantage of this personal disability. (1 *Inst.* 128.) But such disability abateth not the writ, but only disableth the plaintiff, until he obtain a charter of pardon. (1 *Inst.* 128.)

For treason or felony.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared and judgment had been given against him, as long as the outlawry is in force. (2 *Haw. c.* 48, *s.* 22.)

For an inferior offence.

But the outlawry for a misdemeanor doth not inure as a conviction for the offence, as it doth in cases of treason and felony; but as a conviction of the contempt for not answering, which contempt is therefore punished, not by fine as a conviction for the offence, but by forfeiture of goods and chattels for the contempt. (*R.* v. *Tippen*, 2 *Salk.* 494.)

Goods forfeited from the time of issuing the *exigent*.

The very issuing of the *exigent*, in case of treason or felony, gives to the queen the forfeiture of the goods of the party from the time of the teste of the writ of *exigent;* and the forfeiture by the *exigent* awarded stands, although the indictment be quashed, until there be a judgment of reversal on a writ of error; because the queen's title, being of record, must be awarded by a record. (2 *Hale*, 204, 205.)

Lands forfeited from the time of the outlawry.

And as the award of the *exigent* gives the forfeiture of the goods, so the outlawry gives the forfeiture or loss of the lands of the party outlawed; to wit, in case of outlawry of treason, his lands are forfeited to the queen, of whomsoever they are held; and, in case of outlawry of felony, to the lord by escheat of whom they are immediately holden. (2 *Hale*, 206.)

But the outlawry must be first returned.

But it must be remembered, that the bare judgment of outlawry by the coroner, without the return thereof of record, is no attainder, nor gives any escheat; but it must be returned by the sheriff, with the writ of *exigi facias*, and the return indorsed. (2 *Hale*, 206.) Or else it must be removed by *certiorari;* for the judgment given by the coroner in the county court is not matter of record, that court not being a court of record. (1 *Inst.* 288.)

And after inquisition found.

And by the outlawry all *personal* chattels are vested in the queen by forfeiture; but *real* chattels, or freehold estates, are not vested in the queen till after inquisition found. (*Anon.* 3 *Salk.* 262; *R.* v. *Cooke*, 1 *M'Cl. & Y.* 196; *Tisdall* v. *Bennett*, 1 *Jones, Irish Exch.* 492.)

Whether it is lawful to kill an outlaw.

In ancient times no man could have been outlawed but for felony, the punishment whereof was death; and upon this account an outlawed man was called *wolfeshead*, because he might be put to death by any man as a wolf, that hateful beast, might. But in the beginning of the reign of king Edward the Third, it was resolved by the judges, for avoiding of inhumanity and effusion of Christian blood, that it should not be lawful for any man but the sheriff having lawful warrant, to put to death any man outlawed, though it were for felony; and, if he did, he shall undergo such pain of death as if he had killed any other man: and so the law continues to this day. (1 *Inst.* 28.)

Judges of assize may award execution of persons outlawed before justices.

If a man be indicted before justices of the peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaol delivery may award execution of this prisoner; for they are constituted to deliver the gaol. (4 *Inst.* 166; *Hale's Sum.* 158: 2 *Hale*, 35.)

Person outlawed cannot be a plaintiff.

Where a person is outlawed, the defendant may show all the matter and outlawry returned of record, and demand judgment if he shall be answered, because he is out of the law, to sue an action during the time that he is outlawed. (1 *Inst.* 128.)

Cannot be a juror.

It seems to be a good challenge of a juror, that he is outlawed either for a criminal matter, or, as some say, in a personal action; but not a principal challenge, but only to the favour, unless the record of the outlawry be produced. (2 *Haw. c.* 25, *s.* 16; *c.* 43, *s.* 25.)

2. *Outlawry.*

An outlaw is incapacitated from suing in his own right, from seeking to enforce a legal right of his own, (*Walford* v. *Meetham, Moore,* 431); and from appearing in court for any other purpose than either to reverse his outlawry, (*Aldridge* v. *Buller,* 2 *M. & W.* 412; 5 *Dowl.* 733, *S. C.*), or to protect or defend himself from being wrongfully charged in execution, (*Adcock* v. *Fiske,* 8 *Scott,* 138; 8 *Dowl.* 66, *S. C.*); or from any other wrongful action or proceeding. (*Hall* v. *Hawkins, Beavan,* 73; *Walker* v. *Thelluson,* 1 *Dowl. N. S.* 578.)

May be a witness.

Outlawry, in a *personal* action, is not a good exception against a witness, as it is against a juror. (2 *Haw. c.* 46, *s.* 21; *Co. Lit.* 6 b.)

May make a will.

An outlawed person may make a will, and have executors or administrators. (*Wolley* v. *Bradwell, Cro. El.* 575.)

And an executor may reverse the outlawry of the testator, where he was not lawfully outlawed. (1 *Leon.* 325.)

Reversing outlawry.

Outlawry may be reversed several ways: as, by procuring a *supersedeas* and delivering it to the sheriff before the *quinto exactus;* or by showing any matter apparent on record which makes the outlawry erroneous, as the want of an original; or the omission of process, or want of form in a writ of proclamation, or a return by a person appearing not to be sheriff, or a variance between the original and *exigent,* or other process, or by a misnomer or want of addition. (2 *Haw. c.* 50; *see* 2 *Chit. Arch. Pr.* 935.)

In what case the party must appear personally to reverse it.

And upon a writ of error upon an outlawry in felony, the party outlawed must render himself in custody, and pray the allowance of the writ of error in person; and if the outlawry be reversed, he shall be put to answer the indictment. (2 *Hale,* 209.) But by the 4 & 5 Will. III. c. 18, one outlawed, except for treason or felony, need not appear in person to reverse an outlawry, but may appear by attorney. (*Anon.* 2 *Salk.* 496.)

III. Forms.

(1.) *Venire.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of Westmoreland, greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you cause A. O., of , in your said county, [yeoman,] to come before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county, committed at , in your said county, on the day of next ensuing, to answer unto us upon certain articles presented against him, the said A. O. And have you there then this precept. Witness, J. P. and K. P., at , the day of , in the year of our reign.

And upon this *venire,* if the defendant be returned sufficient, and maketh default, then a *distringas* shall be awarded, and so the same process infinite, until he come in; but if a *nihil habet* be returned at the first, then, after the *venire,* there shall go out a *capias, alias pluries,* and *exigent.* (*Dalt. Sher.* 160.)

(2.) *Distringas.*

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of , greeting. We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and distrain A. O. of , in your county, [yeoman,] by all his lands and tenements, &c., and that you answer for the issues thereof, &c., and that you have his body before our justices assigned [and so on as before in the *venire*].

But if a *nihil* (as hath been said) be returned at first upon the *venire facias,* then a *capias* shall issue, thus:—

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith. To the sheriff of the county of

greeting. We command you that you omit not, by reason of any liberty in your bailiwick, but that you enter the same, and take A. O., of , in your county, [yeoman,] if he shall be found in your bailiwick, and him cause to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, at , in your county, on the day of next ensuing, to answer unto us concerning divers trespasses, contempts, and offences, of which he is indicted. And have you there then this writ. Witness, J. P. and K. P., at , the day of , in the year of our reign.

3. *Forms.*

At which day, A. S., knight, sheriff of the county aforesaid, returned that he is not found in his bailiwick, and he did not come. Therefore it is commanded as before.

Note.—The cause why the entry is made, *and he did not come*, is, because the party may appear voluntarily, and so avoid the attachment or arrest of his body.

Victoria, &c. [as *ante*, 666, No. 1.] *To the sheriff of . We command you, as we before commanded you, that you omit not* [as before].

(3.) The *alias capias.*

At which day [as before], *and he did not come. Therefore it is commanded to the sheriff, as it hath been often commanded, &c.*

Victoria, &c. [as *ante*, 666, No. 1.] *To the sheriff, &c. We command you, as we have often commanded you, that you omit not* [as before].

(4.) The *pluries capias.*

At which day, A. S. knight, the sheriff aforesaid, returned that the aforesaid A. O. is not found in his bailiwick, and he did not come. Therefore it is commanded, that you cause to be demanded, &c.

Victoria, &c. [as *ante*, 666, No. 1.] *To the sheriff, &c. greeting. We command you that you cause A. O., of , in your county, [yeoman,] to be* demanded, *until, by the law and custom of our kingdom of England, he be outlawed, if he shall not appear; and if he shall appear, that then you take him and cause him to be safely kept, so that you have his body before our justices assigned to keep our peace, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in your said county committed, at the general quarter sessions of the peace of your county, next after the feast of next ensuing, to be held wheresoever in the same county the said sessions shall happen to be holden, to answer unto us of divers trespasses, contempts, and offences, of which he is indicted. And have you then there this writ. Witness, Sir J. P., baronet, at , in the said county, the day of , in the year of our reign.*

(5.) The *exigent.*

At which day, A. S., knight, sheriff of the county aforesaid, returned that at this county court holden at , the day of , in the year of the reign of our lady the Queen that now is, and so at four other county courts then next following there holden, the aforesaid A. O. was demanded, and did not appear. Therefore, by the judgment of the coroner of our said lady the Queen, in the county aforesaid, he was outlawed.

Victoria, &c. [as *ante*, 666, No. 1.] *To the sheriff, &c. greeting. We command you that you omit not, by reason of any liberty in your county, but that you take A. O., late of , in your county, [labourer.] if he shall be found within your county, and him cause safely to be kept, so that you have his body before the keepers of our peace and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors, in your county committed, at , the day of , to stand right in our court before our justices aforesaid, upon a certain outlawry against him, the said A. O., promulgated, at our suit, for certain felonies* [or, *trespasses*] *whereof he is indicted. And have you then there this writ. Witness, &c.*

(6.) The *capias utlagatum.*

Proclamation, Proof of, *ante*, Vol. II. p. 384;—Under Riots, *post*, "*Riot*;"—In Outlawry, *ante*, 661.

Profaneness. *See* "*Blasphemy*," Vol. I.

Procurer. *See* "*Accessory*;" "*Attempts*," Vol. I.

Promissory Notes.

By the 15 Geo. III. c. 51, various provisions were made to restrain the negotiation of promissory notes and inland bills of exchange, under a limited sum, in England; but doubts have arisen as to the power of justices of the peace to hear and determine offences under that act.

Promissory notes for less than 20*s*. declared void.

By the 48 Geo. III. c. 88, s. 1, the said act of 15 Geo. III. is repealed, and by sect. 2, it is enacted, "That all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable for the delivery of any goods, specifying their value in money, less than the sum of 20*s*. in the whole, heretofore made or issued, or which shall hereafter be made or issued, shall, from and after the first day of October, 1808, be and the same are hereby declared to be absolutely void and of no effect; any law, statute, usage, or custom, to the contrary thereof in anywise notwithstanding."

Penalty on persons uttering such notes, 20*l*. to 5*l*.

Sect. 3. "If any person or persons shall, after the first day of July, 1808, by any art, device, or means whatsoever, publish or utter any such notes, bills, drafts, or engagements as aforesaid, for a less sum than 20*s*., or on which less than the sum of 20*s*. shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same, every such person shall forfeit and pay, for every such offence, any sum not exceeding 20*l*., nor less than 5*l*., at the discretion of the justice of the peace who shall hear and determine such offence."

Justices may determine on such offences within twenty days.

Sect. 4. "It shall be lawful for any justice or justices of the peace, acting for the county, riding, city, or place, within which any offence against this act shall be committed, to hear and determine the same in a summary way, at any time within twenty days after such offence shall have been committed; and such justice or justices, upon any information exhibited or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses, or otherwise, (which oath such justice or justices is or are hereby authorized to administer,) shall convict the offender, and adjudge the penalty for such offence."

Penalty on witnesses not attending, 40*s*.

Sect. 5. "If any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed, without a reasonable excuse for such his neglect or refusal, to be allowed by such justice or justices, then

such person shall forfeit, for every such offence, the sum of 40*s.*, to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act." 48 Geo. III. c. 88.

Sect. 6. "That the justice or justices before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out, in the manner and form following; (that is to say,)

Form of conviction.

'*Be it remembered, that on the day of , in the year of our Lord , A. B., having appeared before me* [or, *us*], *one* [or more] *of his majesty's justices of the peace* [as the case may be] *for the county, riding, city, or place* [as the case may be], *and due proof having been made upon oath by one or more credible witness or witnesses, or by confession of the party* [as the case may be], *is convicted of* [specifying the offence]. *Given under my hand and seal* [or, *our hands and seals*], *the day and year aforesaid.*'

Returnable to sessions.

Which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county, riding, city, or place, where such conviction was made, to be filed by the clerk of the peace, to remain and be kept among the records of such county, riding, city, or place."

Copies of convictions.

Sect. 7. "It shall be lawful for any clerk of the peace for any county, riding, city, or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this act, to be forthwith delivered to such person or persons upon payment of one shilling for every such copy."

Recovery and application of penalties.

Sect. 8. "The pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act, shall be forthwith paid by the person convicted, as follows; one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall, by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following; (that is to say,)

'*To the constable, headborough, or tithingman of .*

Form of warrant of distress.

'*Whereas A. B., of , in the county of , in this day convicted before me* [or, *us*], *one* [or more] *of his majesty's justices of the peace* [as the case may be] *for the county of* , [or, *for the riding of the county of York*, or *for the town, liberty, or district of* , as the case may be] *upon the oath of , or , a credible witness or witnesses* [or, *by confession of the party*, as the case may be], *for that the said A. B. hath* [here set forth the offence], *contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of , to be distributed as herein is mentioned, which he hath refused to pay: These are, therefore, in his majesty's name, to command you to levy the said sum of by distress of the goods and chattels of him the said A. B.; and if within the space of five days next after such distress by you taken, the said sum, together with the reasonable charges of taking the same, shall not be paid, then that you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of to , of , who informed me* [or, *us*, as the case shall be] *of the said offence, and the other half of the said sum of to the overseer of the poor of the parish, township, or place where the offence was committed, to be employed for the benefit of such poor, returning the overplus* [if any] *upon demand to the said A. B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of*

48 Geo. III. c. 88.

that then you certify the same to me [or, *us*, as the case shall be], *together with this warrant. Given under my hand and seal* [or, *our hands and seals*], *the day of , in the year of our Lord .*'"

Security for appearance of party, on return of such warrants.

Sect. 9. "It shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before the said justice or justices on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security): which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise."

Offenders may be committed for want of distress.

Sect. 10. "If, upon such return, no sufficient distress can be had, then, and in such case, the said justice or justices shall and may commit such offender to the common gaol or house of correction of the county, riding, division, or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender, thinking him or herself aggrieved by such conviction, shall give notice to the informer that he or she intends to appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county, riding, or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions (which notice of appeal, being not less than eight days before the trial thereof, such person so aggrieved is hereby empowered to give); and the said justices at such sessions, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter session shall be final, binding, and conclusive to all intents and purposes."

Parishioners may be witnesses.

Sect. 11. "No person shall be disabled from being a witness in any prosecution for any offence against this act, by reason of his being an inhabitant of the parish wherein such offence was committed."

Convictions not removable by certiorari.

Sect. 12. "No proceedings to be had, touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by writ of *certiorari*, or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster."

Limitation of actions.

Sect. 13. "If any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact committed, and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof as any defendant or defendants hath or have in any other cases by law."

Venue.

Treble costs.

By the 17 Geo. III. c. 30, all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of 20*s.* or above that sum, and less than 5*l.*, on which 20*s.* or above, and less than 5*l.*, shall remain undischarged, shall (1) specify the names and places of abode of the persons respectively to whom, or to whose order, the same shall be made payable; and (2) shall bear date before or at the time of drawing or issuing thereof, but not on any day subsequent thereto; and (3) shall be made payable within twenty-one days next after the day of the date thereof, and shall not be transferable or negotiable after the time thereby limited for payment; and (4) every indorsement thereon shall be made before the expiration of that time, and shall bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person to whom or to whose order the money is to be paid; otherwise such note, bill, draft, or undertaking shall be void. 17 Geo. III. c. 30. Promissory notes, &c. of 20*s.* and under 5*l.*

And by the 37 Geo. III. c. 32, s. 3, if the person liable to pay the same, shall fail to make full payment in money of the sum therein mentioned, or any part thereof [for seven days, 37 Geo. III. c. 61, s. 2], after demand by the holder, one justice, on complaint by such holder, may summon such person refusing to pay; and on his appearance, or in default, on proof on oath of such summons having been duly served, may hear and determine the same, and may award such sum to be paid, together with the costs, not exceeding 20*s.*, as to him shall seem meet; and if not paid upon demand, may levy the same by distress, together with all costs attending such distress. Power of the justices.

Which notes, bills, drafts, or undertakings and indorsements, may be in the form or to the effect following: Forms of notes.

[Place, day, month, year.] *Twenty-one days after date, I promise to pay to A. B. of , or his order, the sum of for value received by*
Witness, *C. D.*
E. F.

Indorsement *toties quoties.*

[Place, day, month, year.] *Pay the contents to G. H., of , or his order.*
Witness, *A. B.*
J. K.

If it is upon advice, say, *Twenty-one days after date, pay to A. B., of or his order, the sum of , value received, as advised by*
C. D.

The publishing, uttering, or negotiating notes, bills of exchange, drafts, or undertakings, contrary to this act, is prohibited and restrained under the like penalties as for offences against the former act; so that the impracticability of recovering the said penalties is alike in both cases. Negotiating notes contrary to act.

Prophecies.

As to cheats by witchcraft and fortune telling, *see "Witchcraft,"* Vol. VI.

By the 5 Eliz. c. 15, if any person shall advisedly and directly advance, publish, and set forth by writing, printing, signing, or any other open speech or deed, any fond, fantastical, or false prophecy, upon or by the occasion of any arms, fields, beasts, badges, or such other like things accustomed in arms, cognizances, or signets, or upon or by reason of any time, year or day, name, bloodshed, or war, to the intent thereby to make any rebellion, insurrection, dissension, loss of life, or other disturbance in the realm; and shall be convicted thereof before a judge of assize, or justice of the peace, within six months after the offence committed, he shall for the first offence be imprisoned for a year, and forfeit 10*l.*; and 5 Eliz. c. 15.

5 Eliz. c. 15.

for the second offence shall be imprisoned for life, and forfeit his goods: half the forfeitures to the king, and half to him who shall sue for them in any court of record.

The intent of this act was, to abolish certain foolish and superstitious notions which prevailed in the times of ignorance, as were set forth in a statute made in the 33 Hen. VIII. c. 13, reciting, "Whereas divers and sundry persons, making their foundation by prophecies, have taken upon them a knowledge (as it were) what shall become of them which bear in their arms, cognizance, or badge, fields, beasts, fowls, or any other thing which hath been used or accustomed to be put in any of the same, or in and upon the letters of their names, have devised, descanted, and practised, to make folk think, that by their untrue guesses it might be known what good or evil things should come, happen, or be done, by or to such persons as bore or had such badges or cognizances, or had such letters in their names, to the great terror and destruction of such noble personages, of whom such false prophecies have or should hereafter set forth, whereby, in times past, many noblemen have suffered, and (if their prince would give any ear thereto) might hap to do hereafter;" and therefore enacted, that he who should do so, should be guilty of felony without benefit of clergy.

This statute was wholly repealed by the 1 Edw. VI. c. 12, which repealed all statutes making any offences felony, from the first year of the reign of king Henry VIII. And the substance thereof was re-enacted, with a mitigation of the penalty, by the 3 & 4 Edw. VI. c. 15. Which statute expiring, the 5 Eliz. c. 15 was enacted as above.

Prosecutor. *See* "*Indictment*," Vol. III.; "*Evidence*," Vol. II. p. 433.

Prout Patet per Recordum. *See* "*Indictment*," Vol. III.

Proviso, in a Statute, *Statement of, in an Indictment, see* "*Indictment*," Vol. III.;—*Statement of, in a Conviction, see* "*Conviction*," Vol. I.

Public Worship.

As to the Profanation of Churches in general, *see* "*Church*," Vol. I. p. 658.

Arresting Clergymen attending Service, *see ibid.*

Holding Fairs, &c., in Churches, *ibid.* 659.

Brawling in, *ibid.* 659.

Striking in, *ibid.* 660.

Not going to Church, *see* "*Lord's Day*," Vol. III.

Travelling, Baking, Exercising Trades, &c., Killing Game, and Serving Process on Sunday, *see ibid.*

Impugning the Common Prayer and Public Worship, *see* "*Common Prayer*," Vol. I.

Disturbing Congregations in Churches, *see* "*Common Prayer*," Vol. I.; "*Dissenters*," Vol. II.

See also, *title*, "*Dissenters*," Vol. II.

Public-House. *See "Alehouse,"* Vol. I.

Publication *of Libel. See "Libel,"* Vol. III.

Punishment. *See "Felony," "Fine," "Hard Labour," "Imprisonment,"* Vol. III.; *and see ante, "Misdemeanor," "Pillory;" "Transportation," "Whipping,"* Vol. VI.; *and see in general, "Judgment,"* Vol. III.

Purveyors.

Abuses of purveyors.

ANCIENTLY, the king's court was supplied with necessaries from the ancient demesnes of the crown; and in respect thereof the tenants of those lands had many privileges, which they still enjoy: but this method, being found troublesome and inconvenient, was by degrees disused; and, afterwards, the king was wont to appoint certain officers to buy in provisions for his household, who were called purveyors, and claimed many privileges by the prerogative of the crown. (2 *Inst.* 542; 1 *Haw. c.* 47, *s.* 1.)

Purveyance taken away.

The several laws which restrained the exorbitance of these purveyors made up a pretty large title in the old books; but these laws proving ineffectual to remedy the evil complained of, at length by the 12 Car. II. c. 24, purveyance was entirely taken away; by which it is enacted, that no sum of money, or other thing, shall be taken for any provision, carriages, or purveyances for the king.

And that no person, under colour of purveyance, shall take any timber, fuel, cattle, corn, grain, malt, hay, straw, victual, cart, carriage, or other thing, without consent of the owner; nor shall require any to furnish any horses, oxen or other cattle, carts, ploughs, wains, or other carriages, for the use of the king or his household, without the owner's consent.

On pain of being committed to gaol by a justice of the peace, and the constable, until the next sessions, to be there indicted; and also of paying to the party treble damages and treble costs on an action at law.

Quaker. *See "Evidence,"* Vol. II. p. 452; *ante, "Oath,"* p. 252.

Quarantine. *See ante, "Plague."*

Quarter Sessions. *See "Sessions," post.*

Quashing Indictments, &c. *See* "*Indictment*," "*Information*," Vol. III.; "*Certiorari*," Vol. I.

Quay, *Stealing from.* *See* "*Larceny*," Vol. III.

Queen. As to Treason, *see* "*Treason*," Vol. VI. As to Discharging, &c., Fire Arms, &c., at, *see id.* As to Offences against her Stores, *see post*, "*Stores*." When bound by a Statute, *see post*, "*Statutes*."

Queen's Bench. *See* "*King's Bench*," Vol. III.

Quorum, *Meaning of.* *See* "*Justices*," Vol. III.

Quo Warranto.

A WRIT of quo warranto is in the nature of a writ of right for the queen, against him who claims or usurps any office, franchise, or liberty, to inquire by *what authority* (*quo warranto*) he supports his claim, in order to determine the right. (*Finch, Law.* 322; 2 *Inst.* 282.)

It lies also in case of nonuser (or long neglect of a franchise), or misuser (or abuse of it), being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. (3 *Bla. Com.* 263.)

The court will not grant a quo warranto information against persons for usurping a franchise of a mere private nature, not connected with public government. (*R.* v. *Ogden*, 10 *B. & Cres.* 230.)

This writ, being more in the nature of a *civil* than a criminal proceeding, is not here further noticed. (*See Tidd's Pract. 9th ed.; Com. Dig. Quo Warranto;* 3 *Bla. Com.* 263.)

Rabbits. *See* "*Game*," Vol. III.

Rail. *See* "*Fences*," Vol. III.

Railways.

[3 & 4 Vict. c. 97; 5 & 6 Vict. c. 55.]

As to constables on railways, *see* "*Constables*," Vol. I.

When a railway is a highway, *see* "*Highway*," Vol. III. p. 503.

By the 3 & 4 Vict. c. 97, entitled "An Act for regulating Railways," [10th August, 1840,] reciting that "it is expedient for the safety of the public to provide for the due supervision of railways," it is enacted, "That, after two months from the passing of this act, no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her majesty's privy council appointed for trade and foreign plantations."

3 & 4 Vict. c. 97.

No railway to be opened without notice to the board of trade.

Sect. 2. "That if any railway, or portion of any railway, shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway; and any such penalty may be recovered in any of her majesty's courts of record."

Penalty for opening railways without notice.

Sect. 3. "That the lords of the said committee may order and direct every railway company to make up and deliver to them returns, according to a form to be provided by the lords of the said committee, of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively, on the said railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods, conveyed on the said railway; and if the returns herein specified shall not be delivered within thirty days after the same shall have been required, every such company shall forfeit to her majesty the sum of twenty pounds for every day during which the said company shall wilfully neglect to deliver the same; and every such penalty may be recovered in any of her majesty's courts of record: Provided always, that such returns shall be required, in like manner, and at the same time, from all the said companies, unless the lords of the said committee shall specially exempt any of the said companies, and shall enter the grounds of such exemption in the minutes of their proceedings."

Returns to be made by railway companies.

Sect. 4. "That every officer of any company who shall wilfully make any false return to the lords of the said committee shall be deemed guilty of a misdemeanor."

Penalty for making false returns.

Sect. 5. "That it shall be lawful for the lords of the said committee, if and when they shall think fit, to authorize any proper person or persons to inspect any railway; and it shall be lawful for every person so authorized, at all reasonable times, upon producing his authority, if required, to enter upon and examine the said railway, and the stations, works, and buildings, and the engines and carriages belonging thereto: Provided always, that no person shall be eligible to the appointment as inspector as aforesaid, who shall within one year of his appointment have been a director, or have held any office of trust or profit under any railway company."

Board of trade may appoint persons to inspect railways.

Sect. 6. "That every person wilfully obstructing any person, duly authorized as aforesaid, in the execution of his duty, shall on conviction before a justice of the peace having jurisdiction in the place where the

Penalty on persons obstructing inspector.

3 & 4 Vict. c. 97.

offence shall have been committed, forfeit and pay for every such offence any sum not exceeding ten pounds; and on default of payment of any penalty so adjudged, immediately or within such time as the said justice of the peace shall appoint, the same justice, or any other justice having jurisdiction in the place where the offender shall be or reside, may commit the offender to prison for any period not exceeding three calendar months; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner."

Copies of existing bye laws to be laid before the board of trade;

Sect. 7. "And whereas many railway companies are or may hereafter be empowered by act of parliament to make bye laws, orders, rules, or regulations, and to impose penalties for the enforcement thereof, upon persons other than the servants of the said companies, and it is expedient that such power should be under proper control; be it enacted, That true copies of all such bye laws, orders, rules, and regulations made under any such powers by every such company before the passing of this act, certified in such manner as the lords of the said committee shall from time to time direct, shall, within two calendar months after the passing of this act, be laid before the lords of the said committee; and that every such bye law, order, rule, or regulation, not so laid before the lords of the said committee within the aforesaid period, shall, from and after that period, cease to have any force or effect, saving in so far as any penalty may have been then already incurred under the same."

otherwise to be void.

No future bye laws to be valid till two calendar months after they have been laid before the board of trade.

Sect. 8. "That no such bye law, order, rule, or regulation made under any such power, and which shall not be in force at the time of the passing of this act, and no order, rule, or regulation annulling any such existing bye law, rule, order, or regulation which shall be made after the passing of this act, shall have any force or effect until two calendar months after a true copy of such bye law, order, rule, or regulation, certified as aforesaid, shall have been laid before the lords of the said committee, unless the lords of the said committee shall, before such period, signify their approbation thereof."

Board of trade may disallow bye laws.

* *Sic*; read "which."

Sect. 9. "That it shall be lawful for the lords of the said committee, at any time either before or after any bye law, order, rule, or regulation *shall have been laid before them as aforesaid shall have come into operation, to notify to the company who shall have made the same their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no bye law, order, rule, or regulation which shall be so disallowed shall have any force or effect whatsoever, or, if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same."

Provisions of railway acts requiring confirmation of bye laws repealed.

Sect. 10. "That so much of every clause, provision, and enactment in any act of parliament heretofore passed as may require the approval or concurrence of any justice of the peace, court of quarter sessions, or other person or persons, other than members of the said companies, to give validity to any bye laws, orders, rules, or regulations made by any such company, shall be repealed."

Board of trade may direct prosecutions to enforce provisions of railway acts.

Sect 11. "That whenever it shall appear to the lords of the said committee that any of the provisions of the several acts of parliament regulating any of the said companies, or the provisions of this act, have not been complied with on the part of any of the said companies, or any of their officers, and that it would be for the public advantage that the due performance of the same should be enforced, the lords of the said committee shall certify the same to her majesty's attorney general for England or Ireland, or to the lord advocate for Scotland, as the case may require; and thereupon the said attorney general or lord advocate shall, by information, or by action, bill, plaint, suit at law or in equity, or other legal proceeding, as the case may require, proceed to recover such penalties and forfeitures, or otherwise to enforce the due performance of the said

provisions, by such means as any person aggrieved by such non-compliance, or otherwise authorized to sue for such penalties, might employ under the provisions of the said acts: Provided always, that no such certificate as aforesaid shall be given by the lords of the said committee until twenty-one days after they shall have given notice of their intention to give the same to the company against or in relation to whom they shall intend to give the same."

3 & 4 Vict. c. 97.

Notice to be given to the company.

Sect. 12. "That no legal proceedings shall be commenced under the authority of the lords of the said committee against any railway company for any offence against this act, or any of the several acts of parliament relating to railways, except upon such certificate of the lords of the said committee as aforesaid, and within one year after such offence shall have been committed."

Prosecutions to be under sanction of board of trade, and within one year after the offence.

Sect. 13. "That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, guard, porter, or other servant in the employ of such company who shall be found drunk while employed upon the railway, or commit any offence against any of the bye laws, rules, or regulations of such company, or shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon the railway belonging to such company, or the works thereof respectively, shall be or might be injured or endangered, or whereby the passage of any of the engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, or other servant so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch, before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein as aforesaid, shall, when convicted before such justice as aforesaid, (who is hereby authorized and required, upon complaint to him made, upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises,) in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint; such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner."

Punishments of servants of railway companies guilty of misconduct.

Sect. 14 provides and enacts, "That (if upon the hearing of any such complaint he shall think fit) it shall be lawful for such justice, instead of deciding upon the matter of complaint summarily, to commit the person or persons charged with such offence for trial for the same at the quarter sessions for the county or place wherein such offence shall have been committed, and to order that any such person so committed shall be imprisoned and detained in any of her majesty's gaols or houses of correction in the said county or place in the meantime, or to take bail for his appearance, with or without sureties, in his discretion; and every such person so offending, and convicted before such court of quarter sessions as aforesaid (which said court is hereby required to take cognizance of and hear and determine such complaint), shall be liable, in the discretion of such court, to be imprisoned, with or without hard labour, for any term not exceeding two years."

Justice of the peace empowered to send any case to be tried by the quarter sessions.

Sect. 15. "That from and after the passing of this act every person who shall wilfully do or cause to be done any thing in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist

Punishment of persons obstructing railway.

3 & 4 Vict. c. 97.

therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court before which he shall have been convicted, to be imprisoned, with or without hard labour, for any term not exceeding two years."

The word "wilfully," in this enactment, means no more than designedly; and it is not necessary to show that the defendant did the act expressly with the object of obstructing the carriages, &c. (*Reg.* v. *Holroyd*, 2 *M. & Rob.* 339.)

For punishment of persons obstructing the officers of any railway company, or trespassing upon any railway.

Sect. 16. "That if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid (who is hereby authorized and required, upon complaint to him upon oath, to take cognizance thereof, and to act summarily in the premises,) shall, in the discretion of such justice, forfeit to her majesty any sum not exceeding five pounds, and in default of payment thereof shall or may be imprisoned for any term not exceeding two calendar months, such imprisonment to be determined on payment of the amount of the penalty."

Proceedings not to be quashed for want of form, or removed into the superior courts.

Sect. 17. "That no proceeding to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or process whatsoever, into any of her majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding."

Repeal of all provisions in railway acts that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways.

Sect. 18. "And whereas many railway companies are bound, by the provisions of the acts of parliament by which they are incorporated or regulated, to make, at the expence of the owner or occupier of lands adjoining the railway, openings in the ledges or flanches thereof (except at certain places on such railway in the said acts specified), for effecting communications between such railway and any collateral or branch railway to be laid down over such lands, and any disagreement or difference which shall arise as to the proper places for making any such openings in the ledges or flanches is by such acts directed to be referred to the decision of any two justices of the peace within their respective jurisdictions: And whereas it is expedient that so much of every clause, provision, and enactment in any act of parliament heretofore passed as gives to any justice or justices the power of hearing or deciding upon any such disagreement or difference as to the proper places for any such openings in the ledges or flanches of any railway, should be repealed; be it therefore enacted, That so much of every such clause, provision, and enactment as aforesaid shall be repealed."

Board of trade to determine such disputes in future.

Sect. 19. "That in case any disagreement or difference shall arise between any such owner or occupier, or other persons, and any railway company, as to the proper places for any such openings in the ledges or flanches of any railway (except at such places as aforesaid), for the purpose of such communication, then the same shall be left to the decision of the lords of the said committee, who are hereby empowered to hear and determine the same in such way as they shall think fit, and their determination shall be binding on all parties."

Communications to the board to be left at their office.

Sect. 20. "That all notices, returns, and other documents required by this act to be given to or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, appointments, requisitions, certificates, or

other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this act, be deemed to have been made by the lords of the said committee; and service of the same upon any one or more of the directors of any railway company, or on the secretary or clerk of the said company, or by leaving the same with the clerk or officer at one of the stations belonging to the said company, shall be deemed good service upon the said company."

3 & 4 Vict. c. 97.

Communications by the board how to be authenticated.

What shall be deemed good service on railway company.

Sect. 21. "That wherever the word 'Railway' is used in this act it shall be construed to extend to all railways constructed under the powers of any act of parliament, and intended for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and wherever the word 'Company' is used in this act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless the subject or context be repugnant to such construction."

Meaning of the words "railway" and "company."

By the 5 & 6 Vict. c. 55, entitled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," [30th July, 1842,] reciting that by the 3 & 4 Vict. c. 97, provision was made for the supervision of railways; and that it is expedient for the safety of the public to make further provision for that purpose, it is enacted, "That this act shall come into operation on the passing thereof."

5 & 6 Vict. c. 55.

Commencement of act.

Sect. 2. "That the provisions of the said recited act and of this act shall be construed together as one act, except so far as the provisions of the said recited act are hereby repealed, or shall be inconsistent with the provisions of this act."

The 3 & 4 Vict. c. 97, and this act to be construed together.

Sect. 3. "And whereas by the said recited act it is enacted, that after two months from the passing of the said recited act no railway, or portion of any railway, shall be opened for the public conveyance of passengers or goods until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her majesty's privy council appointed for trade and foreign plantations: And whereas by the said recited act it is also enacted, that if any railway or portion of any railway shall be opened without due notice as aforesaid, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open, until the expiration of one calendar month after the company shall have given the like notice as is hereinbefore required before the opening of the railway, and any such penalty may be recovered in any of her majesty's courts of record; be it enacted, That the said recited provisions of the said act shall be and they are hereby repealed."

Notice before opening railway repealed.

Sect. 4. "That no railway or portion of any railway shall be opened for the public conveyance of passengers until one calendar month after notice in writing of the intention of opening the same shall have been given, by the company to whom such railway shall belong, to the lords of the committee of her majesty's privy council appointed for trade and foreign plantations, and until ten days after notice in writing shall have been given by the said company to the lords of the said committee of the time when the said railway or portion of railway will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection."

Notice of intended opening of railway.

Sect. 5. "That if any railway or portion of any railway shall be opened without such notice as aforesaid, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired; and every such penalty may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriffs courts in Scotland."

If railway opened without notice, company to forfeit 20*l.*

5 & 6 Vict. c. 55.

Board of trade empowered to postpone the opening.

Sect. 6. "That if the officer or officers appointed by the lords of the said committee to inspect any such railway or portion of railway shall, after inspection thereof, report in writing to the lords of the said committee that, in his or their opinion, the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, it shall be lawful for the lords of the said committee, and so from time to time, as often as such officers shall after further inspection thereof so report, to order and direct the company to whom such railway shall belong to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the lords of the said committee that such opening may take place without danger to the public; and if any such railway, or any portion thereof, shall be opened contrary to any such order and direction of the lords of the said committee, the company to whom such railway shall belong shall forfeit to her majesty the sum of twenty pounds for every day during which the same shall continue open contrary to such order and direction; and any such penalty may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriffs courts in Scotland: Provided always, that no such order as aforesaid shall be binding upon any railway company unless therewith shall be delivered to the said company a copy of the report of the officer or officers on which such order shall be founded."

Notice of accidents to be given to the board of trade.

Sect. 7. "That every railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to the public using the same, give notice thereof to the lords of the said committee; and if any company shall wilfully omit to give such notice every such company shall forfeit to her majesty the sum of five pounds for every day during which the omission to give the same shall continue; and every such penalty may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriffs courts in Scotland."

Board of trade empowered to direct returns.

Sect. 8. "That the lords of the said committee may order and direct any railway company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the lords of the said committee shall deem necessary and require for their information with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit to her majesty the sum of five pounds for every day during which the said company shall neglect to deliver the same; and every such penalty may be recovered in any of her majesty's courts of record, or in the courts of session or in any of the sheriffs courts in Scotland: Provided always, that all such returns shall be privileged communications, and shall not be evidence in any court whatsoever."

Gates at level crossings to be kept closed across the road.

2 & 3 Vict. c. 45.

Sect. 9. "And whereas by an act passed in the second and third years of her present majesty, and intituled 'An Act to amend an Act of the Fifth and Sixth Years of his late Majesty King William the Fourth relating to Highways,' it was enacted, that whenever a railway crosses or shall hereafter cross any turnpike road, or any other highway or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the said railway shall make and maintain good and sufficient gates across each end of such turnpike or other road at each end of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or other road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railway: And whereas by the acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railway, except during the time when carriages or engines passing along the railway shall

have to cross such turnpike or other road: And whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road instead of across the railway; be it therefore enacted, That, notwithstanding any thing to the contrary contained in any act of parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway; and such gates shall be of such dimensions and so constructed as, when closed across the ends of such turnpike or other roads, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed: Provided always, that it shall be lawful for the lords of the said committee, in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed, instead of across the road; and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed, in the manner directed by the lords of the said committee." (*See* "*Highways*," Vol. III.)

5 & 6 Vict. c. 55.

Proviso.

Sect. 10. "And whereas it is expedient that further provision be made for the safety of the public in respect of the fences of railways; be it enacted, That all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices by virtue of the provisions to that effect in the acts of parliament relating to such railways respectively."

Railway companies to erect and maintain fences.

Sect. 11. "That where two or more railway companies whose railways have a common terminus or a portion of the same line of rails in common, or which form separate portions of one continued line of railway communication, shall not be able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, it shall be lawful for the lords of the said committee, upon the application of either of the parties, to decide the questions in dispute between them, so far as the same relate to the safety of the public, and to order and determine whether the whole or what proportion of the expences attending on such arrangements shall be borne by either of the parties respectively; and if any railway company shall refuse or wilfully neglect to obey any such order made upon or against such company by the lords of the said committee pursuant to this provision, such company shall forfeit to her majesty the sum of twenty pounds per day for every day during which such refusal or neglect shall continue; and every such penalty may be recovered in any of her majesty's courts of record, or in the court of session or in any of the sheriffs courts in Scotland."

Disputes between connecting railways to be decided by the board of trade.

Sect. 12. "And whereas powers of laying down branch lines opening into the ledges or flanches of main lines of railway, and of entering upon and passing along such main lines with carriages and waggons drawn by locomotive engines, or by other mechanical or animal power, and also powers to form roads or railways across existing railways on a level, have been given by various acts relative to railways to the owners or occupiers of lands adjoining the railway, and to other persons with their consent: And whereas experience has shown that the exercise of such powers without limitation would in many cases be attended with danger to the public using such railway; be it therefore enacted, That if, in the case of any railway on which passengers are conveyed by steam or other mechanical power, it shall appear to the lords of the said committee that such power as aforesaid cannot be so exercised without seriously endangering the

Powers of making branch communication with railways, and of entering upon them with locomotive engines, to be regulated by the board of trade.

5 & 6 Vict. c. 55.

public safety, and that an arrangement may be made with a due regard to existing rights of property, it shall be lawful for the lords of the said committee to order and direct that such powers shall only be exercised subject to such conditions as the lords of the said committee shall direct: Provided always, that no railway shall be considered a passenger railway if two thirds or more of the gross annual revenue of such railway shall be derived from the carriage thereon of coals, iron-stone, or other metals or minerals."

Defining a passenger railway.

Alteration of dangerous level crossings.

Sect. 13. "And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong would in some cases be willing, at their own expence, to carry such roads and tramways over or under such railways by means of a bridge or archway for the greater safety of the public, but have no authority so to do: And whereas it would promote the public safety if railway companies were enabled, under the sanction and authority of the lords of the said committee, to substitute bridges or archways for such level crossings as aforesaid; be it therefore enacted, That in all cases where any railway company shall be willing, at their own expence, to carry any turnpike road, highway, or private road or tramway over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee, on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expence, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the lords of the said committee shall direct."

Power for railway companies to enter upon adjoining lands to repair accidents.

Sect. 14. "And whereas it is essential for the public safety, and also for the proper maintenance of railways in a state of efficiency for the public service, that railway companies should have the power, in case of accidents or slips happening or being apprehended to their cuttings and embankments or other works, to enter upon the lands adjoining their respective railways, for the purpose of repairing or renewing the same, and to do such works as may be necessary for the purpose; be it therefore enacted, That it shall be lawful for the lords of the said committee to empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose: Provided always, that in case of necessity it shall be lawful for any railway company to enter upon such lands and do such works as aforesaid, without having obtained the previous sanction of the lords of the said committee; but in every such case such railway company shall, within forty-eight hours after such entry, make a report to the lords of the said committee, specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the lords of the said committee shall, after considering the said report, certify that their exercise is not necessary for the public safety: Provided also, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss or injury or inconvenience sustained by them respectively by reason of such works, the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway on which such works may become necessary: Provided always, that no land shall be taken perma-

nently by any railway company for such works without a certificate from the lords of the said committee as hereinafter described." 5 & 6 Vict. c. 55.

Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety by the board of trade.

Sect. 15. "And whereas by various acts relating to railways compulsory powers are given to railway companies of purchasing and taking lands for the construction of such railways, and it is provided that such compulsory powers shall not be exercised after the expiration of certain limited periods from the passing of the said acts: And whereas it is sometimes found necessary for the public safety that additional land should be taken after the expiration of such periods for the purpose of giving increased width to the embankments and inclination to the slopes of railways, or for making approaches to bridges or archways, or for doing such works for the repair or prevention of accidents as are hereinbefore described; be it therefore enacted, That, in every case in which the lords of the said committee shall certify that the public safety requires additional land to be taken by any railway company for such purposes as aforesaid, the compulsory powers of purchasing and taking land contained in the act or acts of such railway company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the lords of the said committee, revive and be in full force for such further period as shall be mentioned in such certificate: Provided always, that any railway company applying to the lords of the said committee for any such certificate shall give fourteen days notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land owners, of their intention to make such application to all the parties interested in such lands, or such of them as shall be known to the company, and shall state in such notice the particulars of the lands required; and if any of such parties interested shall apply within the said period of fourteen days to the lords of the said committee, such party shall be heard by them before any such certificate is given: Provided also, that where any such application shall have been made by any railway company to the lords of the said committee, upon which application any such certificate shall have been refused, the directors of such railway shall, if required by the lords of the said committee, repay to the party resisting such application any expences which he or they may have incurred in resisting such application."

Carriages of greater weight than four tons may be used on railways.

Sect. 16. "And whereas by various acts relating to railways it is enacted, that no carriage or waggon shall carry or bear at any one time upon the railway (including the weight of such carriage) more than four tons, and experience has shown that it is in many cases more conducive to safety to use a heavier description of carriage or waggon upon railways than was originally contemplated; be it therefore enacted, That every provision contained in any such act or acts respectively limiting the weight to be carried or borne at any one time in any carriage or waggon upon any railway (including the weight of such carriage or waggon) to four tons shall be and the same is hereby repealed, and that, notwithstanding any thing in any act contained, it shall be lawful for any railway company to use and to permit to be used upon any railway carriages or waggons carrying or bearing (including the weight of such carriage) a greater weight than four tons, subject to such regulations as may from time to time be made and be in force pursuant to any act or acts of parliament already or hereafter to be passed in that behalf."

Punishment of persons employed on railways guilty of misconduct.

Sect. 17. "And whereas by the said recited act for regulating railways provision is made for the punishment of servants of railway companies guilty of misconduct, and it is expedient to extend such provision; be it enacted, That it shall be lawful for any officer or agent of any railway company, or for any special constable duly appointed, and all such persons as they may call to their assistance, to seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by the said or by any other railway company, or by any other company or person, in conducting traffic upon the railway belonging to the said

5 & 6 Vict. c. 55.

company, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed upon the said railway, who shall commit any offence against any of the bye laws, rules, or regulations of the said company, or who shall wilfully, maliciously, or negligently do or omit to do any act whereby the life or limb of any person passing along or being upon such railway or the works thereof respectively shall be or might be injured or endangered, or whereby the passage of any engines, carriages, or trains shall be or might be obstructed or impeded, and to convey such engine driver, guard, porter, servant, or other person so offending, or any person counselling, aiding, or assisting in such offence, with all convenient despatch before some justice of the peace for the place within which such offence shall be committed, without any other warrant or authority than this act; and every such person so offending, and every person counselling, aiding, or assisting therein, as aforesaid, shall, when convicted upon the oath of one or more credible witness or witnesses before such justice as aforesaid (who is hereby authorized and required, upon complaint to him made upon oath, without information in writing, to take cognizance thereof, and to act summarily in the premises), in the discretion of such justice, be imprisoned, with or without hard labour, for any term not exceeding two calendar months, or, in the like discretion of such justice, shall for every such offence forfeit to her majesty any sum not exceeding ten pounds, and in default of payment thereof shall be imprisoned, with or without hard labour, as aforesaid, for such period, not exceeding two calendar months, as such justice shall appoint, such commitment to be determined on payment of the amount of the penalty; and every such penalty shall be returned to the next ensuing court of quarter sessions in the usual manner."

Sheriffs to have jurisdiction in Scotland.

Sect. 18. "That in all cases in which by the present or the said recited act for regulating railways it is provided that offenders shall be taken before one or more justices of the peace for the place within which the offence was committed, it shall be lawful, in case the offence is committed in Scotland, to take such offenders before the sheriff of the county, or other magistrate acting for the district within which such offence shall be committed, or where such offender shall be apprehended, without any warrant or authority other than this act; and such sheriff or magistrate is hereby empowered and required, on the application of the railway company, to proceed in all respects as if the words 'sheriff or magistrate' had been substituted for the word 'justice' in the said acts, and shall be entitled summarily, and without a jury, to execute the powers thereby and hereby committed to him."

Communications to and from the board of trade, and service of notices, &c. on railway company.

Sect. 19. "That all notices, returns, and other documents required by this act or by the said recited act to be given to or laid before the lords of the said committee shall be delivered at or sent by the post to the office of the lords of the said committee; and all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the said committee, or by some officer appointed for that purpose by the lords of the said committee, and purporting to be made by the lords of the said committee, shall, for the purposes of this and of the said recited act, be deemed to have been made by the lords of the said committee, and that in the absence of evidence to the contrary, without proof of the authority of the person signing the same or of the signature thereto; and service of the same at one of the terminal offices of any railway company on the secretary or clerk of the said company, or by sending the same by post addressed to him at such office, shall be deemed good service upon the said company."

Railway companies shall convey military and police forces at prices to be settled.

Sect. 20. "That whenever it shall be necessary to move any of the officers or soldiers of her majesty's forces of the line, ordnance corps, marines, militia, or the police force, by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such

conditions as may from time to time be contracted for between the secretary at war and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities." 5 & 6 Vict. c. 55.

Sect. 21. "That whenever the word 'Railway' is used in this or in the said recited act it shall be construed to apply to all railways used or intended to be used for the conveyance of passengers in or upon carriages drawn or impelled by the power of steam or by any other mechanical power; and whenever the word 'Company' is used in this or in the said recited act it shall be construed to extend to and include the proprietors for the time being of any such railway, whether a body corporate or individuals, and their lessees, executors, administrators, and assigns, unless in either of the above cases the subject or context be repugnant to such construction." Meaning of the words "railway" and "company."

Sect. 22. "That all penalties under this act, for the application of which no special provision is made, shall be recovered in the name and for the use of her majesty, in the manner provided by the said recited act for regulating railways." Application of penalties.

Rape.

As to assaults with intent to commit a rape, *see* "*Assault*," Vol. I.

As to ravishing children, *see* "*Children and Infants*," Vol. I.

The Offence of, and when complete.]—Rape is, when a man hath carnal knowledge of a woman by force, and against her will. (2 *Inst.* 180; 1 *Haw. c.* 41, *s.* 1; 1 *Russ. C. & M* 675.) Rape, what.

To constitute the offence there must be a penetration. (*R.* v. *Hill*, 1 *East, P. C.* 439.) It was held in *Russen's case*, 1 *East, P. C.* 438, that the *least degree of penetration* was sufficient, though not attended with the deprivation of the marks of virginity. In that case it was proved, that the parts of the injured party were so narrow, that a finger could not be introduced, and that the hymen was whole and unbroken; and yet this was held a sufficient penetration to constitute the offence (emission having also been proved, which was necessary as the law stood at that time); *and see R.* v. *M'Rae*, 8 *C. & P.* 541. The offence may be complete, though the hymen was not ruptured. (*R.* v. *Hughes*, 9 *C & P.* 752; overruling *R.* v. *Gammon*, 5 *C. & P.* 321.) If penetration cannot be proved, still the defendant may be convicted of the assault. (7 Will. IV. & 1 Vict. c. 85, s. 11; *ante*, "*Assault*," Vol. I.) Penetration necessary.

Before the 9 Geo. IV. c. 31, s. 18, it was necessary to prove emission, which might be proved either positively, by the evidence of the woman that she felt it; or, it might be presumed from circumstances, as, for instance, that the defendant, after having connection with the prosecutrix, arose from her voluntarily, without being interrupted in the act. (*R.* v. *Harmwood*, 1 *East, P. C.* 440; *R.* v. *Sheridan*, 1 *East, P. C.* 438; *R.* v. *Burrows, R. & R.* 519.) But now by that act, s. 18, reciting, "And whereas, upon trials for the crimes of buggery, and of rape, and of carnally abusing girls under the respective ages hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of those several crimes;" for remedy thereof it is enacted, "That it shall not be necessary, in any of those cases to prove the actual emission of seed in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only." Since this enactment, even though the jury Emission not necessary.

The Offence of. negative, or the circumstances be proved to have been such as that no emission did or could take place, the offence is complete. (*R.* v. *Cox*, 1 *Mood. C. C.* 337; 5 *C. & P.* 297; *R.* v. *Reckspear*, 1 *Mood. C. C.* 342; *Reg.* v. *Allen*, 9 *C. & P.* 31. And see an able note by Mr. Greaves, in 1 *Russ. C. & M.* 683, *3rd ed.*)

Who capable of committing the offence.

A boy under the age of fourteen years is presumed by law incapable to commit a rape. (1 *Hale*, 681; *R.* v. *Bromilow*, 2 *Mood. C. C.* 122; *R.* v. *Groombridge*, 7 *C. & P.* 582; *and see title*, "*Children and Infants*," Vol. I.) A husband cannot be guilty of a rape upon his wife. (1 *Hale*, 629.)

But, in both these cases, they may be principals in the second degree, and punished for being present, aiding and abetting. (*Id.* 629, 630; *Lord Audley's case*, 3 *How. St. Tr.* 419; *R.* v. *Eldershaw*, 3 *C. & P.* 396.) And an infant may be convicted of an assault under the 1 Vict. c. 85, s. 11. (*R.* v. *Bromilow*, 9 *C. & P.* 366; 2 *Mood. C. C.* 122. *S. C.*)

The offence must be against the will of the woman.

The rape must have been committed against the will of the woman. But the offence is no way mitigated by showing that the woman at last yielded to the violence, if such her consent were forced by fear of death or of duress. (1 *Haw. c.* 41, *s.* 2.)

Also, it is not a sufficient excuse in the ravisher to prove that the woman is a common strumpet; for she is still under the protection of the law, and may not be forced. (1 *Haw. c.* 41, *s.* 2.)

Nor is it any excuse that the woman consented after the fact. (1 *Haw. c.* 41, *s.* 2.)

It is said by Mr. *Dalton* (*c.* 160), that if a woman at the time of the supposed rape, do conceive with child by the ravisher, this is no rape: "for (he says) a woman cannot conceive except she doth consent." But Mr. *Hawkins* observes, that this opinion seems very questionable; not only because the previous violence is no way extenuated by such a subsequent consent, but also because, if it were necessary to show that the woman did not conceive, the offender could not be tried till such time as it might appear whether she did or not; and likewise because the philosophy of this notion may be very well doubted of. (1 *Haw. c.* 41, *s.* 9.) And Lord *Hale* says, this opinion in *Dalton* seems to be no law. (1 *Hale*, 631.)

A man having connection with a woman, under a deceit practised on her, she supposing him to be her husband, is not guilty of the offence of rape. (*R.* v. *Jackson*, *R. & R.* 487; *R.* v. *Saunders*, 8 *C. & P.* 265; *and Reg.* v. *Williams*, *id.* 286.) But he might be convicted of an assault, under the stat 7 Will. IV. & 1 Vict. c. 85, s. 11 (*See* "*Assault*," Vol. I.)

Aiders and accessaries.

Aiders and Accessaries].—Mr. *Hawkins* says, all who are present, and actually assist a man to commit a rape, may be indicted as principal offenders, whether they be men or women, (1 *Haw. c.* 41, *s.* 6,) and there may be accessaries before and after the fact in this offence, and such accessaries are punishable under the 9 Geo. IV. c. 31, s. 31. (1 *Russ. C. & M.* 3*rd ed.* 676; *ante*, "*Accessary*," Vol. I.)

The indictment.

The Indictment.]—It must be alleged that the rape was committed with violence, and against the will of the woman. (*C. C. C.* 427; 3 *Chit. C. L.* 815.) Also that she was ravished; alleging merely that the defendant carnally knew her is not sufficient. (1 *Hale*, 628; 1 *Russ. C. & M.* 686.) It is proper to allege that the defendant carnally knew her, but the omission would, it seems, be cured by verdict. (*R.* v. *Warren*, 1 *Russ. C. & M.* 3*rd ed.* 686; *and see* 2 *Inst.* 180; 2 *Hawk. P. C. c.* 25, *s.* 56.) An indictment charging that the defendant in and upon A. B., "feloniously and violently did make [omitting the words "an assault"] and her the said A. B. then and there against her will, violently and feloniously did ravish and carnally know," &c. was held sufficient in arrest of judgment. (*R.* v. *Allen*, 9 *C. & P.* 521.) It seems necessary to conclude that the offence was against the form of the statute. (1 *Russ. C. & M.* 687, 3*rd ed.*; *see R.* v. *Scott*, *R. & R.* 415.)

In *R.* v. *Burgess and others*, *Chester Spr. Ass.* 1813, upon an indict-

ment charging three persons jointly with the commission of a rape, an objection was taken that three persons could not be guilty of the same joint act; but it was overruled, upon the ground that the legal construction of the averment was only that they had done such acts as subjected them to be punished as principals in the offence. The execution was, however, respited, probably with a view to enable the learned judges to consult other authorities on the accuracy of their opinion: but the prisoners were afterwards executed. (5 *Ev. Col. Stat. Cl.* 6, p. 244, *note* (17), *2nd ed.; and see* 1 *Russ.* 801.)

The Indictment, and Evidence of.

A general conviction of a prisoner, charged both as principal in the first degree and as an aider and abettor of other men in rape, is valid, on the count charging him as principal. And on such an indictment evidence may be given of several rapes on the same woman, at the same time, by the prisoner and other men, each assisting the other in turn, without putting the prosecutor to elect on which count to proceed. (*R.* v. *Folkes, R. & M. C. C.* 354; *and see R.* v. *Gray*, 7 *C. & P.* 164.)

An indictment is good which charges that A. committed a rape, and that B. was present aiding and assisting him in his commission of the felony. (*Reg.* v. *Crisham*, 1 *Car. & M.* 187.) In such a case the party aiding may be charged, either, as he was in law, a principal in the first degree, or, as he was in fact, a principal in the second degree. (*Ib.*)

Evidence and Witnesses to prove Offence.]—The party ravished may give evidence on oath, and is in law a competent witness; but the credibility of her testimony, and how far forth she is to be believed, must be left to the jury, and is more or less credible according to the circumstances of fact that concur in that testimony. (*R.* v. *Lord Castlehaven*, 1 *State Trials*, 387; 1 *Hale*, 633.)

Evidence and witnesses to prove offence.

A woman ravished.

For instance: if the witness be of good fame; if she presently discovered the offence, and made pursuit after the offender; have shown circumstances and signs of the injury, whereof many are of that nature that only women are the most proper examiners and inspectors; if the place wherein the fact was done were remote from people, inhabitants, or passengers; if the offender fled for it. These and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. (*Id.*)

Circumstances in favour of it.

But, on the other side, if she concealed the injury for any considerable time after she had opportunity to complain; if the place where the fact was supposed to be committed were near to inhabitants, or common recourse or passage of passengers, and she made no outcry when the fact was supposed to be done, when and where, it is probable, she might be heard by others; or if a man prove himself to be in another place, or in other company, at the time she charges him with the fact; or if she be wrong in the description of the place; or swear the fact to be done in a place where it was impossible the man could have access to her at that time, as if the room were locked up, and the key in the custody of another person; these and the like circumstances carry a strong presumption that her testimony is false or feigned. (*Id.*)

Circumstances in distavour of it.

The fact of the woman having made a complaint after the commission of the alleged rape is evidence; but not it seems the particulars of such complaint, (*R.* v. *Walker*, 2 *M. & Rob.* 212; 1 *Russ. C. & M. by Greaves*, 3*rd ed.* 689,) even though the woman is dead. (*R.* v. *Megson*, 9 *C. & P.* 420.) And where the woman is absent, it is not allowable to prove that she made a complaint soon after the alleged rape; for such evidence is merely confirmatory of the story of the woman, and no part of the *res gestæ*. (*R.* v. *Guttridge*, 9 *C. & P.* 471.)

Complaint made is evidence.

The defendant may give evidence of the woman's notoriously bad character for want of chastity or common decency, or that she had before been connected with the prisoner himself; but he cannot give evidence of any other particular facts to impeach her chastity. (*R.* v. *Hodgson, R. & R.* 211; 1 *Phil. Ev.* 190; *R.* v. *Clarke*, 2 *Stark.* 243.) So, what she herself said so recently after the fact as to preclude the possibility of her being

Bad character of woman.

Evidence and Witnesses, &c.

practised on, has been holden to be admissible in evidence as a part of the transaction; but the particulars of her complaint are not evidence of the truth of her statement. (*R.* v. *Brazier*, 1 *East's P C.* 444; *R.* v. *Clarke*, 2 *Stark.* 241.) The woman, however, is not compellable to answer whether she has not had connection with other men, or with a particular person named; nor is evidence of her having had such connection admissible. (*R.* v. *Hodgson*, *R. & R.* 211.) On the trial of an indictment for a rape, it was held that the prisoner's counsel might ask the prosecutrix the following questions, with a view to contradict her: "Were you not, on, &c. (since the time of the alleged offence), walking in the High Street at Oxford to look out for men?" "Were you not, on, &c. (since the time of the alleged offence), walking in High Street with a woman reputed to be a common prostitute?" It was also held, that evidence might be adduced by the prisoner to show the general light character of the prosecutrix, and that general evidence might be given of her being a street-walker; but *semble*, that evidence of specific acts of criminality by her would not be admissible. (*R.* v. *Barker*, 3 *C. & P.* 589; *R.* v. *Martin*, 6 *C. & P.* 562.)

General caution.

"It is true," says Lord *Hale*, "that rape is a most detestable crime, and therefore ought severely and impartially to be punished with death; but it must be remembered, it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent." He then mentions two remarkable cases of malicious prosecutions for this crime, that had come within his knowledge; and concludes, "I mention these instances that we may be more cautious upon trials of offences of this nature, wherein the court and jury may, with so much ease, be imposed upon, without great care and vigilance; the heinousness of the offence many times transporting the judge and jury with so much indignation, that they are over-hastily carried to the conviction of the person accused thereof, by the confident testimony, sometimes, of malicious and false witnesses." (1 *Hale*, 635, 636; 4 *Blu. Com.* 214.)

Wife a witness.

The party grieved is so much considered as a witness of necessity in this as in other personal injuries, that if one assist another man to ravish his own wife, she is admissible as a witness against him. (*Lord Audley's case*, 3 *Howell's St. Tr.* 419, *cited in* 1 *East's P. C.* 444.)

Children witnesses.

As to how far the testimony of a child is admissible, *see* "*Children and Infants*," Vol. I.

Punishment for.

Punishment for.]—By the 9 Geo. IV. c. 31, s. 16, this offence was punishable with death; but now by the 4 & 5 Vict. c. 56, s. 3, reciting the 9 Geo. IV. c. 31, ss. 16 & 17, it is enacted, "That from and after the commencement of this act, [1st Oct. 1841,] if any person shall be convicted of any of the said offences hereinbefore last specified, such person shall not be subject to any sentence, judgment, or punishment of death, but shall, instead of the sentence or judgment in and by the said act hereinbefore last recited ordered to be given or awarded against persons convicted of the said last-mentioned offences, or any of them respectively, be liable to be transported beyond the seas for the term of his natural life."

As to the punishment of accessaries, *see* 9 Geo. IV. c. 31, s. 31, *ante*, "*Accessary*," Vol. I.; *and see* 1 *Russ. C. & M., by Greaves*, 3*rd ed.* 691, n. (*m*).

Not triable at sessions.

Not triable at Sessions.]—By the 4 & 5 Vict. c. 56, s. 6, this offence is not triable at any quarter sessions. (*See also* 5 & 6 Vict. c. 38, s. 1.)

Warrant for a rape.

County of] *To the constable of , and to all other constables and peace-officers in and for the said county of .*

Forasmuch as A. S., of , in the said county, [single woman,] hath this day made information and complaint upon oath before me, G. C. Esq., one of her majesty's justices of the peace in and for the said county, that A. R., of

, in the said county, [labourer,] on the day of instant, at , in the said county , did violently and feloniously make an assault upon her, the said A. S., and her, the said A. S., then and there, violently and against her will, did ravish and carnally know: these are therefore to command you, in her majesty's name, forthwith to apprehend and bring before me, or some other of her majesty's justices of the peace in and for the said county, the body of the said A. B., to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the day of , in the year of our Lord .

Commencement as usual, as *ante*, p. 11.] *on at violently and feloniously did assault one C. D., and her, the said C. D., then and there, violently and against her will, feloniously did ravish and carnally know; against the form of the statute in that case made and provided. And you the said keeper, &c.* [Conclude as usual, as *ante*, 11.] Commitment for.

——— (to wit) The jurors of our lady the Queen upon their oath present, that A. O., late of , in the county of , [yeoman,] on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, at , in the county aforesaid, in and upon one A. I., in the peace of God and of our said lady the Queen, then and there being, violently and feloniously did make an assault, and her, the said A. I., violently and against the will of her, the said A. I., then and there feloniously did ravish and carnally know; against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. Indictment for.

Rate. *See "Poor," Vol. IV.; "Church," Vol. I.*

Receipts. *See title, "Stamps," post;*—Forgery of, *see "Forgery,"* Vol. III. p. 133.

Receivers of Stolen Goods, &c. *See "Accessary,"* Vol. I. p. 33.

Recognizance.

WHAT.]—Recognizance is a bond of record, testifying the recognizor to owe a certain sum of money to some other; and the acknowledging of the same is to remain of record; and none can take it but only a judge or officer of record. (*Dalt. c.* 186; 2 *Bla. Com.* 341.) What.

Before whom taken, and in what cases.]—These recognizances, in some cases, the justices of the peace are enabled to take by the express words of certain statutes; but in other cases, (as for the peace and good behaviour, and the like,) it is rather in congruity, and by reasonable intendment of law, than by any express authority given them, either by their commission, or by the statute law. (*Crom.* 125; *Dalt. c.* 168.) Before whom taken, and in what cases.

Wheresoever any statute giveth them power to take a bond of any man,

Before whom taken, and in what cases.

or to bind over any man to appear at the assizes or sessions, or to take sureties for any matter or cause, they may take a recognizance. Yea, wheresoever they have authority given them to cause a man to do a thing, there it seemeth they have, in congruity, power given them to bind the party by recognizance to do it; and if the party shall refuse to be bound, the justice may send him to gaol. (*Dalt. c.* 168.)

But he can take no recognizance but only of such matters as concern his office; and if he doth, it seemeth to be void. (*Dalt. c.* 168.)

As regards the power and duty of justices to bind by recognizances to prosecute or give evidence, this is provided for by the 7 Geo. IV. c. 64, which will be found under *title*, "*Examination*," Vol. II.

The fourth section of the 7 Geo IV. c. 64, empowers coroners on inquests to bind by recognizance witnesses to appear, &c. in cases of manslaughter or murder, or accessory to murder. (*See* "*Coroner*," Vol. II.)

As to the recognizance by the accused, and his bail to appear, &c., *see* "*Bail*," Vol. I.

As to the recognizance and sureties to keep the peace, *see* "*Surety for the Peace*," *post*.

As to the recognizances on appeal or *certiorari*, &c., *see* "*Appeal*," "*Certiorari*," Vol. I.

By whom entered into.

By whom entered into.]—The statute requiring the recognizance points out the parties by whom it is to be entered into. In general, infants and married women, who cannot legally bind themselves, must procure others to be bound for them (*See Bennet* v. *Watson*, 3 *M. & Selw.* 1; "*Examination*," Vol. II. p. 473.) But a recognizance to prosecute or give evidence seems binding on an infant. (*See Exp. Williams*, 13 *Price*, 670; *M'Clel.* 493.) It was there held that infancy was no ground for discharging a forfeited recognizance to appear at the assizes to prosecute for felony.

Form of.

Form of.]—Every obligation and recognizance, taken by justices of the peace, must be made to the queen; on pain of imprisonment of any person that shall take it otherwise. (*Dalt. c.* 168.)

It must also contain the name, place of abode, and trade or calling, both of principal and sureties, and the sums in which they are bound. (*Barl. Recog.* p. 454.)

And by the 3 Geo. IV. c. 46, s. 4, it is enacted, that each and every justice of the peace, before whom any recognizance shall be entered into or taken, shall and is hereby required to give, or cause to be given, at the time of entering into such recognizance, to the person or persons, surety or sureties, so entering into the same, and to each of them a written or printed paper or notice, in the form or to the effect stated in the schedule marked [see form, *post*, No. 1,] to this act annexed, adapting the same to the particular circumstances of the case; and each and every such justice shall, in such recognizance, state and particularly specify, not only the profession, art, mystery, or trade of every person so entering into such recognizance, together with their christian name and names, and surnames, but also the parish, township, or place of his or her residence; and, in case such residence shall be in any city, town, or borough, shall also state and particularly specify the name of the street, and number of the house (if any), in which such person shall reside, and also, whether owner or tenant thereof, or lodger therein. It would seem, however, that although the words "any recognizance" appear sufficient to embrace all recognizances, yet the whole of the statute, and the notice above required, appear to relate only to recognizances to be returned to the general or quarter sessions. (*Car. C. L.* 120.)

Condition of.

The recognizance is most commonly subject to a condition, which is either indorsed or underwritten, or contained within the body of it, upon the performance of which the recognizance shall be void. (*Barl. Recog.* p. 454.) The subject matter of the condition must depend on each particular case.

Manner of taking it.]—The recognizance is taken by calling the parties by their names, and stating the substance of the recognizance, thus:— Manner of taking it.

"*You, A. B., acknowledge to owe to our sovereign lady the Queen the sum of , and you, C D., acknowledge to owe to our sovereign lady the Queen the sum of , to be levied of your respective goods and chattels, lands and tenements, for the use of our said lady the Queen, her heirs and successors, if default shall be made in the condition following; that is to say, if you, the said A. B., shall make default in appearing,*" &c.

But the parties need not sign it, their verbal acknowledgment will suffice. (*Barl. Recog.* p. 454; *R.* v. *Justices of St. Alban's*, 8 *A. & E.* 932; 1 *P. & D.* 148, *S. C.*)

And it is usual for the justices to mark at the foot of the examination, "A. B, in 40*l.* to appear," &c. And from such short note make out a record afterwards. (*Barl. Recog.* p. 454.) By the 7 Geo. IV. c. 64, ss. 2 & 3, justices of the peace are imperatively required to subscribe recognizances.

It must be entered on a roll, for until then it is not a perfect record. But when it is entered it is a recognizance from the acknowledgment (*Hall* v. *Wingfield, Hob.* 195, 196, *Pl.* 248; *Vin. Ab. Recog. H.*; *Dalton, c.* 168; *Glynn* v. *Sharpe*, 1 *B. & Ald.* 153.) Enrolling of.

Yet the recognizance is matter of record presently so soon as it is taken and acknowledged, although it be not made up. (*Dalt. c.* 168; *sed vide Glynn* v. *Thorpe*, 1 *B. & Ald.* 153, where it was considered that a recognizance was not a record until enrolled.)

Lord *Coke* (1 *Inst.* 260) says that a record is a memorial or remembrance in rolls of parchment, &c. From whence it seemeth that a recognizance ought to be engrossed on parchment—perhaps, for this reason, because parchment is more durable than paper: but since there is no law which prohibits it to be engrossed on paper, it seemeth that, if it shall be on paper only, and not on parchment, it is good in law.

And when it is made up, if the justice shall only subscribe his name without his seal to it, this is well enough; and that may be in either of these sorts: "Acknowledged before me, J. P.;" or only to subscribe his name thus—"J. P." (*Dalt. c.* 176.)

By the 3 Hen. VII. c. 1, the justices shall certify their recognizances for *keeping the peace* to the next sessions, that the party may be called; and, if he make default, the default shall be recorded, and the recognizance, with the record of the default, shall be sent and certified into the Chancery, Queen's Bench, or Exchequer. Certifying recognizance.

The 7 Geo. IV. c. 64, ss. 2 & 3, requires magistrates, instead of certifying to the sessions recognizances of bail, or to prosecute, or give evidence, to deliver them to the proper officer of the court before or at the opening of the court. (*See* "*Examination*," Vol. II. p. 475.)

We have seen that by the 3 Geo. IV. c. 46, s. 4, the justice before whom the recognizance is taken must at the time of the party's entering into it, give to him and each of them, if more than one, a written or printed notice of the substance of the recognizance. It would seem, however, that this is applicable only to the case of recognizances to be returned to the general or quarter sessions. Notice to be given on entering into.

Refusing to enter into.]—If a party improperly refuse to enter into the recognizance to prosecute or give evidence, the magistrate, it seems, has power to commit him, this power being virtually included in his commission, and, by necessary consequence from the 7 Geo. IV. c. 64. (*See* 1 *Hale*, 586; 2 *Hale*, 52; *ante*, "*Examination*," Vol. II p. 465.) Refusing to enter into.

Respiting or Discharging.]—The court before which a man is bound by his recognizance to appear, may respite that recognizance until another time, upon his application, if, under the circumstances, they think it right to do so. (*R.* v. *Drummond*, 11 *Mod.* 200.) And in that case he will be bound to appear at such enlarged time. But they will not dis- Respiting or discharging.

charge it, or allow it to be withdrawn, unless they are satisfied that the condition of it has been substantially complied with. (*See R.* v. *Paul*, 6 *Carr. & P.* 323; *and see further, title, "Fines," &c.* Vol. III. p. 30.)

Forfeiture and estreat.

Forfeiture and Estreat of.]—If the party fail to comply with the condition of the recognizance, the same will become forfeited, and may be put in force against him.

It is incumbent on persons under recognizance, who, in consequence either of bills not having been found, or of none having been preferred, may not be called upon to answer or give evidence, to see that their appearance is recorded so as to enable the court to order his recognizance to be cancelled, as otherwise such an attendance is no attendance at all. (*Per Thompson, C. B., R.* v. *Miller, Jun.* 1808, 4 *Chit. C. L.* 490, 491.)

Before the 3 Geo. IV. c. 46, recognizances forfeited before justices were estreated into the exchequer, and process of enforcing the payment of the forfeiture was issued out of that court. But this mode of proceeding is now altered by that act, which see, *title, "Fines," &c.* Vol. III. p. 32.

As to the mode of proceeding on forfeited recognizances to appear and give evidence in case of felony or misdemeanor, or to answer for a common assault, or to articles of the peace, or to abide an order in bastardy, *see* 7 Geo. IV. c. 64, s. 31, *title, "Fines," &c.* Vol. III. p. 38.

(1.) Notice by justices to be delivered to party on his entering into a recognizance.

——— *(to wit.) Take notice, that you , of , are bound in the sum of pounds, and your sureties in the sums of pounds each, to appear at the quarter or general sessions of the peace for the county of , to be holden at , on the day of next, and unless you personally make your appearance accordingly, the recognizances entered into by yourself and your securities will be forthwith levied on you and your bail. Dated this day of A. D.*

Justices of the Peace.

[N.B.—This form is prescribed by the schedule to the 3 Geo. IV. c. 46, s. 4, *ante*, 690. It seems to be requisite only in cases of recognizances to be returned to the quarter or general sessions, *ante*, 690.]

(2.) Recognizance before a justice with sureties.

County of } Be it remembered, that on the day of , in the year of the reign of our sovereign lady the Queen Victoria, A. O., of , in the county aforesaid, [yeoman,] and A. S., of , in the county aforesaid, [tailor,] and B. S., of , in the county aforesaid, [labourer,] personally came before me, J. P., esq., one of the justices of our said lady the Queen, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lady the Queen; that is to say, the said A. O., the sum of 20l., and the said A. S. and B. S., each the sum of 10l. separately, and of good and lawful money of Great Britain, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of our said lady the Queen, her heirs and successors, if the said A. O. shall make default in the condition herein indorsed [or, *hereunder written*].

Acknowledged before me, J. P.

The condition of the above [or, *within*] *written recognizance is such, that if* [here state the condition,] *then the said recognizance to be void, or else to stand in full force and virtue.*

(3.) Recognizance before a justice without sureties.

County of } Be it remembered, that on the day of , in the year of the reign of our sovereign lady the now Queen Victoria, A. O., of , in the said county, yeoman, personally came before me, J. P., esq., one of the justices of our said lady the Queen, assigned to keep the peace of the said county, and acknowledged himself to owe to our said lady the Queen 10l. of good and lawful money of Great Britain, to be made and

levied of his goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if he, the said A. O., shall fail in the condition under-written [or, *indorsed*]. *J. P.*

Forms.

The condition of the above-written [or, *within-written*] *recognizance is such, that if, &c.* [ ] *then the said recognizance to be void, or else remain in full force and virtue.*

(4.) The like before a session.

Middlesex. Be it remembered that at the general [*quarter*] *session of the peace of our lady the Queen, holden for the county of* [*Middlesex*], *at* [*the Sessions-house upon Clerkenwell Green*] *in the said county, on Tuesday, the 6th day of February,* 1844, [*and from thence continued and holden at the said Sessions-house by adjournment unto and upon Thursday, the 8th day of February,* 1844,] *A. B., of , in the county of Surrey,* [*labourer,*] *acknowledges himself to be indebted to our lady the Queen in the sum of of good and lawful money of Great Britain, to be levied upon his goods and chattels, lands and tenements, to the use of our lady the Queen, her heirs and successors.*

(5.) Condition of, to prefer a bill of indictment.

See the form, ante, "*Examination,*" Vol. II. p. 477.

(6.) Condition of, to give evidence.

See the form, id.

(7.) Condition of, to answer to an indictment.

The condition of this recognizance is such, that if the above-bound A. O. shall personally appear at the next [*general*] *quarter sessions of the peace, to be holden at , in and for the said county, then and there to answer to an indictment to be preferred against him by A. I., of , [yeoman,] for* [*assaulting and beating him the said A. I.,* as the case may be], *and not depart without leave of the court, then this recognizance to be void.*

Records, Stealing, &c. of, *see* "*Larceny,*" Vol. III.;—Evidence by, *see* "*Evidence,*" Vol. II. p. 391;—Right to, on Conviction, *see* "*Autrefois Convict;*" *also, title,* "*Conviction;*"—Entry of Recognizance of, *see ante,* 690;—Establishment of Public Record Office, 1 & 2 Vict. c. 94.

Recovery of Tenements. *See* "*Landlord and Tenant,*" Vol. III.

Recusant. *See ante,* "*Popery;*" "*Dissenters,*" Vol. I.; "*Church,*" Vol. I.

Re-examination. *See* "*Evidence,*" Vol. II. p. 460; "*Examination,*" Vol. II. p. 460, 466.

Registers.

I. *Parochial Registers.*

[6 & 7 Will. III. c. 3; 52 Geo. III. c. 146; 11 Geo. IV. & 1 Will. IV. c. 66, ss. 20, 22.]

II. *Non-Parochial Registers.*

[6 & 7 Will. IV. c. 85. 86; 1 Vict. c. 22; 3 & 4 Vict. c. 92.]

As to Proof of Registers in general, *see* "*Evidence*," Vol. II. p. 385.

I. Parochial Registers.

As to the origin of parish registers, *see Bac. Ab Evid. F.*

6 & 7 Will. III. c. 6.

Stat. 6 & 7 Will. III. c. 6, s. 24, requires all persons in holy orders (extended by 9 & 10 Will. III. c. 35, s. 4, to bishops) within their parishes and places to keep a register of marriages, christenings, births, and burials, under a penalty of 100*l.*, giving to all parties concerned a right of inspection without fee.

The principal statute, however, in force for regulating the keeping and preserving of parochial registers of baptisms, marriages, and burials, is the 52 Geo. III. c. 146. By the 6 & 7 Will. IV. c. 86, *post*, 701, so much of this act as relates to the registration of *marriages* is repealed, and new provisions made for that purpose, as well as for the registration of births and deaths. Sect. 20 of the 52 Geo. III. extends its provisions to churches and chapels not parochial. Sect. 49 of the 6 & 7 Will. IV. provides that nothing therein contained shall affect the registration of baptisms and burials as now by law established, or the right of any officiating minister to the fees usually paid for the performance or registration of baptisms, burials, or registers.

52 Geo. III. c. 146.

By stat. 52 Geo. III. c. 146, s. 1, after reciting that "the amending the manner and form of keeping and of preserving registers of baptisms, marriages, and burials of his majesty's subjects in the several parishes and places in England, will greatly facilitate the proof of pedigrees of persons claiming to be entitled to real or personal estates, and be otherwise of great public benefit and advantage," it is enacted, "That from and after the 31st of December, 1812, registers of public and private baptisms, [marriages], and burials, solemnized according to the rites of the united church of England and Ireland, within all parishes or chapelries in England, whether subject to the ordinary, or peculiar, or other jurisdiction, shall be made and kept by the rector, vicar, curate, or officiating minister, of every parish (or of any chapelry where the ceremonies of baptism, marriage, and burial, have been usually and may, according to law, be performed), for the time being, in books of parchment, or of good and durable paper, to be provided by his majesty's printer, as occasion may require, at the expense of the respective parishes and chapelries; whereon shall be printed, upon each side of every leaf, the heads of information herein required to be entered in the registers of baptisms, [marriages], and burials, respectively; and every such entry shall be numbered progressively from the beginning to the end of each book, the first entry to be distinguished by number 1; and every such entry shall be divided from the entry next following by a printed line, according to the forms

Ministers to keep registers of baptisms and burials.

Parishes to provide suitable books for that purpose.

contained in the schedules (A.) (B.) (C.) hereto annexed; and every page of every such book shall be numbered with progressive numbers, the first page being marked with the number 1, in the middle of the upper part of such page, and every subsequent page being marked in like manner with progressive numbers, from number 1 to the end of the book."

King's printer to transmit to each parish a printed copy of this act, and register-books adapted to the forms herein prescribed.

Sect. 2. "And, for better insuring the regularity and uniformity of such register books, a printed copy of this act, together with one book so prepared, as aforesaid, and adapted to the form of the register of baptisms prescribed in the schedule (A.) to this act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of marriages in the schedule (B.) to this act annexed; and also one other book so prepared as aforesaid, and adapted to the form prescribed for the register of burials in the schedule (C.) to this act annexed, shall be provided and transmitted by his majesty's printer to the officiating ministers of the several parishes and chapelries in England respectively, who are hereby required to use and apply the same in and to the purposes of this act; and such books respectively shall be proportioned to the population of the several parishes and chapelries according to the last returns of such population made under the authority of parliament; and other books of like form and quality shall, for the like purposes, be furnished from time to time by the churchwardens or chapelwardens of every parish or chapelry, at the expense of the said parish or chapelry, whenever they shall be required by the rector, vicar, curate, or officiating minister, to provide the same; and all such books shall be of paper, unless required to be of parchment by such churchwardens or chapelwardens respectively."

Registers to be in separate register book.

Sect. 3. "Such registers shall be kept in such separate books aforesaid; and every such rector, vicar, curate, or officiating minister, shall, as soon as possible after the solemnization of every baptism, whether private or public, or burial respectively, record and enter, in a fair and legible handwriting, in the proper register-book, to be provided, made, and kept, as aforesaid, the several particulars described in the several schedules hereinbefore mentioned, and sign the same; and in no case, unless prevented by sickness or other unavoidable impediment, later than within seven days after the ceremony of any such baptism or burial shall have taken place."

Certificate of baptism or burial, when performed in any other place than the parish church or church-yard, to be according to schedule (D.), and entry of such baptism or burial to be distinguished accordingly.

Sect. 4. "Whenever the ceremony of baptism or burial shall be performed in any other place than the parish church or church-yard of any parish (or the chapel or chapel-yard of any chapelry, providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate, of such parish or chapelry, the minister who shall perform such ceremony of baptism or burial shall, on the same or on the next day, transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such baptism or burial, in the form contained in the schedule (D.) to this act annexed; and the rector, vicar, minister, or curate, of such parish or chapelry, shall thereupon enter such baptism or burial, according to such certificate, in the book kept pursuant to this act for such purpose, and shall add to such entry the following words: 'According to the certificate of the Rev. , transmitted to me on the day of .'"

Register books to be kept in custody of the officiating minister, in an iron chest, to be provided at parish expense.

Sect. 5. "That the several books wherein such entries shall respectively be made, and all register books heretofore in use, shall be deemed to belong to every such parish or chapelry respectively, and shall be kept by and remain in the power and custody of the rector, vicar, curate, or other officiating minister of each respective parish or chapelry as aforesaid, and shall be by him safely and securely kept in a dry well-painted iron chest, to be provided and repaired as occasion may require, at the expense of the parish or chapelry, and which said chest containing the said books shall be constantly kept locked in some dry, safe and secure place within the usual place of residence of such rector, vicar, curate, or other officiating minister, if resident within the parish or chapelry, or in the parish church

52 Geo. III. c. 146.

or chapel; and the said books shall not, nor shall any of them be taken or removed from or out of the said chest, at any time or for any cause whatever, except for the purpose of making such entries therein as aforesaid, or for the inspection of persons desirous to make search therein, or to obtain copies from or out of the same, or to be produced as evidence in some court of law or equity, or to be inspected as to the state and condition thereof, or for some of the purposes of this act; and that immediately after making such respective entries, or producing the said books respectively for the purposes aforesaid, the said books shall forthwith again be safely and securely deposited in the said chest."

Annual copies of registers to be made, and to be verified by the officiating minister.

Sect. 6. "That at the expiration of two months after the 31st day of December, 1813, and at the expiration of two months after the end of every subsequent year, fair copies of all the entries of the several baptisms, marriages and burials, which shall have been solemnized or shall have taken place within the year preceding, shall be made by the rector, vicar, curate, or other resident or officiating minister, (or by the churchwardens, chapelwardens, clerk or other person duly appointed for the purpose, under and by the direction of such rector, vicar, curate, or other resident or officiating minister,) on parchment, in the same form as prescribed in the schedules hereunto annexed (to be provided by the respective parishes); and the contents of such copies shall be verified and signed in the form following, by the rector, vicar, curate, or officiating minister of the parish or chapelry to which such respective register book shall appertain:—

'*I, A. B., rector* [or, as the case may be] *of the parish of C.* [or, *of the chapelry of D.*], *in the county of E., do hereby solemnly declare, that the several writings hereto annexed, purporting to be copies of the several entries contained in the several register books of baptisms, marriages, and burials, of the parish or chapelry aforesaid, from the day of to the day of , are true copies of all the several entries in the said several register books respectively, from the said day of to the said day of ; and that no other entry during such period is contained in any of such books respectively,* are truly made, according to the best of my knowledge and belief.* (*Signed*) *A. B.*'

* *Sic.*

Which declaration shall be fairly written, without any stamp, on the said copy immediately after the last entry therein; and the signature to such declaration shall be attested by the churchwardens or chapelwardens, or one of them, of the parish or chapelry to which such register book shall belong."

Annual copies of register books to be transmitted to the registrars of each diocese by the churchwardens.

Sect. 7. "That copies of the said register books, verified and attested as aforesaid, shall, whether such parish or chapelry shall be subject to the ordinary, peculiar or other jurisdiction, be transmitted by such churchwardens or chapelwardens, after they, or one of them, shall have signed the same, by the post, to the registrars of each diocese in England within which the church or chapel shall be situated, on or before the 1st day of June, 1814, and on or before the 1st day of June in every subsequent year."

Registrars to make reports to bishops whether the said copies have been sent in.

Sect. 8. "That the registrar of every diocese in England shall, on or before the 1st day of July, 1814, and on or before the 1st day of July in every subsequent year, make a report to the bishop of such diocese, whether the copies of the registers of the baptisms, marriages, and burials, in the several parishes and places within such diocese, have been sent to such registrar, in the manner and within the time herein required; and in the event of any failure of the transmission of the copies of the registers as herein required, by the churchwardens and chapelwardens of any parish or chapelry in England, the registrar shall state the default of the parish or chapelry specially in his report to the bishop."

On neglect or refusal of minister to verify copies of register books,

Sect. 9. "That in case the rector, vicar, or other officiating minister or curate of any parish or chapelry shall neglect or refuse to verify and sign such copies of such several register books, and such declaration as afore-

said, so that the churchwardens or chapelwardens shall not be able to transmit the same, as required by this act, such churchwardens or chapelwardens shall, within the time required by this act for the transmission thereof, certify such default to the registrar of the diocese within which such parish or chapelry shall be, who shall specially state the same in his report to the bishop of such diocese."

52 Geo. III. c. 146.

churchwardens to certify the default.

Sect. 10. "And, for the obtaining of returns and registers of baptisms and burials in extra-parochial places in England, where there is no church or chapel, it is enacted, That in all cases of the baptism of any child, or the burial of any person in any extra-parochial place in England, according to the rites of the established church, where there is no church or chapel, it shall be lawful for the officiating minister, within one month after such baptism or burial, to deliver to the rector, vicar or curate of such parish immediately adjoining to the place in which such baptism or burial shall take place, as the ordinary shall direct, a memorandum of such baptism or burial, signed by such parent of the child baptized, or a memorandum of such burial, signed by the person employed about the same, together with two of the persons attending the same, according as the nature of the case may respectively require; and every such memorandum respectively shall contain all such particulars as are hereinbefore required; and every such memorandum delivered to the rector, vicar or curate of any such adjoining parish or chapelry, shall be entered in the register of his parish, and form a part thereof."

Where there is no church or chapel, a memorandum of baptism or burial may be delivered to the minister of adjoining parish;

Sect. 11. "That the superscription upon all letters and packets containing the copies of such parish or other registers, to be transmitted by the post to the several offices of the said registrars as aforesaid, shall be indorsed and signed by the churchwardens or chapelwardens of every respective parish and chapelry in England, in the form contained in schedule (E.); and that all such letters and packets shall be carried and conveyed by means of his majesty's post office to, and be delivered at the offices of, the said registrars, without postage or other charge being paid or payable for the same."

Letters and packets, containing annual copies of register books, to go free of postage.

Sect. 12. "That when and so often as the copies of the said register books of baptisms, marriages and burials as aforesaid, and also the said lists of births, baptisms, marriages, or burials as aforesaid, shall be transmitted to the office of the said registrars respectively, as aforesaid, pursuant to the directions hereinbefore contained for that purpose, the said registrars shall respectively cause all the said books and lists to be safely and securely deposited, kept and preserved from damage or destruction by fire or otherwise, and to be carefully arranged for the purpose of being resorted to as occasion may require; and the said registrars respectively shall also cause correct alphabetical lists to be made and kept in books suitable to the purpose, of the names of all persons and places mentioned in such books and lists as shall have been transmitted to the said registrars respectively, which alphabetical lists and books, and also the copies of registers and lists so transmitted to the said registrars as aforesaid, shall be open to public search at all reasonable times on payment of the usual fees."

Annual copies of register books, when transmitted to registrars, to be safely kept from damage; and alphabetical lists to be made.

Sect. 13 enacted that a report should be made to the privy council on or before 1st March, 1813, respecting proper places for the preservation of copies of register books, as well as original wills, in each diocese, and for remuneration of registrars' officers.

Sections 14 and 15 are repealed by the 11 Geo. IV. & 1 Will. IV. c. 66, *post*, 698.

Sect. 16. "That nothing in this act contained shall in any manner diminish or increase the fees heretofore payable or of right due to any minister for the performance of any of the before-mentioned duties, or to any minister or registrar, for giving copies of such registrations, but that all due legal and accustomed fees on such occasions, and all powers and remedies for recovery thereof, shall be and remain as though this act had not been made." [*See also* 6 & 7 Will. IV. c. 86, s. 49, *post*, 712.]

Fees heretofore payable not altered by this act.

52 Geo. III. c. 146.

Annual copy of register books not subject to stamp duty.

Sect. 17. "That no duplicate or copy of any register of baptism, marriage or burial, made under the directions and for the purposes of this act, shall be chargeable with any stamp duty thereon; any act now in force to the contrary thereof in any wise notwithstanding."

Application of penalties.

Sect. 18. "That one half of the amount of all fines or penalties to be levied in pursuance of this act shall go to the person who shall inform or sue for the same; and the remainder of such fines as shall be imposed on any churchwarden or chapelwarden shall go to the poor of the parish or place for which such churchwarden or chapelwarden shall serve; and the remainder of such fines as shall be imposed on any rector, vicar, minister, or curate, or registrar, shall be paid and applied to such charitable purposes, in the county within which the parish or place shall be, as shall be appointed and directed by the bishop of the diocese."

Sect. 19 enacted that lists of all extant register books should be transmitted by the officiating minister to the registrar before 1st June, 1813.

Provisions of act to extend to churches and chapels not parochial.

Sect. 20. "That all and every the provisions in this act shall extend, so far as circumstances will permit, to cathedral and collegiate churches, and chapels of colleges or hospitals, and the burying grounds belonging thereto; and to the ministers who shall officiate in such cathedral or collegiate churches, and chapels of colleges or hospitals, and burying grounds respectively, and shall baptize, marry, or bury any person or persons; although such cathedral or collegiate churches or chapels of colleges or hospitals, or the burying grounds belonging thereto, may not be parochial, or the ministers officiating therein may not be, as such, parochial ministers, and there shall be no churchwarden or churchwardens thereof; and in all such cases, the books hereinbefore directed to be provided, shall be provided at the expense of the body having right to appoint the officiating minister in every such cathedral or collegiate church or chapel of a college or hospital; and copies thereof shall be transmitted to the registrar of the diocese within which such cathedral or collegiate church or chapel of a college or hospital shall be, by the officiating minister of such church, in like manner as is herein directed with respect to parochial ministers, and shall be attested by two of the officers of such church, college or hospital, as the copies of parochial registers are herein directed to be attested by churchwardens: Provided always, that nothing in this act contained shall extend to repeal any provision contained in an act passed in the twenty-sixth year of the reign of his late majesty king George the Second, intituled 'An Act for better preventing Clandestine Marriages.'"

Not to repeal 26 Geo. II. s. 33.

Inserting false entry in register of baptisms, &c.; forging or altering any such entry; uttering any false or forged entry; destroying the register; forging any licence of marriage; transportation for life, &c.

The 11 Geo. IV. & 1 Will. IV. c. 66, (which repeals the 14th and 15th sections of 52 Geo. III. c. 146,) sect. 20, enacts, "That if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district parish, or chapelry in England, any false entry of any matter relating to any baptism, marriage, or burial; or shall forge or alter in any such register any entry of any matter relating to any baptism, marriage, or burial; or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered; or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered, or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, nor less than two years."

Rector, &c. not

Sect. 21. "That no rector, vicar, curate, or officiating minister of any

parish, district parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial, respectively by him solemnized, shall be liable to any of the penalties herein mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid: Provided also, that in the copy of the register which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate, or officiating minister, shall certify the corrections so made by him as aforesaid."

11 Geo. IV. & 1 Will. IV. c. 66.

liable to any penalty for correcting, in the mode prescribed, accidental errors in register

Sect. 22, after reciting that "copies of the registers of baptisms, marriages, and burials, such copies being signed and verified by the written declaration of the rector, vicar, curate, or officiating minister of every parish, district parish, and chapelry in England where the ceremonies of baptism, marriage, and burial may lawfully be performed, are directed by law to be made and transmitted to the registrar of the diocese within which such parish, district parish, or chapelry may be situated," enacts, "That if any person shall knowingly and wiltully insert, or cause or permit to be inserted, in any copy of any register so directed to be transmitted as aforesaid, any false entry of any matter relating to any baptism, marriage, or burial; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any copy of any register so directed to be transmitted as aforesaid; or shall knowingly and wilfully sign or verify any copy of any register so directed to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years, nor less than one year."

Inserting in copy of register of baptisms, &c. transmitted to the registrar, any false entry;

or forging or verifying any copy, knowing it to be false;

transportation for seven years, &c.

See the decisions and law as to forgery in general, *ante*, "*Forgery*," Vol. II.

An indictment for uttering a writing as and for a copy of an entry in a register of marriage kept by the vicar of a parish, need not set out the instrument, as the words of the 2 & 3 Will. IV. c. 123, s. 3, stating to be sufficient in forgery, &c., to describe the instrument as in an indictment for stealing it, are applicable to such a case, although the instrument itself could not be the subject of an indictment for larceny; and, secondly, that the judges could take judicial notice that the parish of Seighford, in the county of Stafford, is a parish in England, and that the indictment need not aver that fact. (*Reg.* v. *Sharpe*, 8 *Car. & P.* 436—*Park and Patteson.*)

SCHEDULES to the 52 Geo. III. c. 146.

SCHEDULE (A.)

1.						
Baptisms solemnized in the parish of *St. A.*, in the county of *B.*, in the year one thousand eight hundred and						
When Baptized.	Child's Christian Name.	Parents' Name.		Abode.	Quality. Trade, or Profession.	By whom the Ceremony was performed.
		Christian.	Surname.			
18—. 1st February No. 1.	John Son of	William Elizabeth		Lambeth.		
3rd March No. 2.	Ann Daughter of	Henry Martha		Fulham.		

SCHEDULE (B.).

The 6 & 7 Will. IV. c. 86, repeals so much of the 52 Geo. III. c. 146, and 4 Geo. IV. c. 76, as relates to the registration of marriages. This schedule is therefore here omitted.

SCHEDULE (C.).

1.				
Burials in the parish of *A.*, in the county of *B.*, in the year one thousand eight hundred and .				
Name.	Abode.	When Buried.	Age.	By whom the Ceremony was performed.
John Wilson. No.	Duke Street, Westminster.	1813, 1st May.	62.	

SCHEDULE (D.).

I, , do hereby certify, that I did, on the day of , baptize according to the rites of the United Church of England and Ireland, son [or, "*daughter*"] *of and his wife, by the name of .*

To the Rector [or, as the case may be] *of* .

52 Geo. III. c. 146.

I. , *do hereby certify, that on the* *day of* , *A. B.*, *of* , *aged* , *was buried in* [stating the place of burial], *and that the ceremony of burial was performed according to the rites of the United Church of England and Ireland, by me.*

To the Rector [or, as the case may be] *of*

SCHEDULE (E.)

To the Registrar of the Diocese of , at

A. B. } *Churchwardens* [or, "*Chapelwardens*"] *of the Parish* [or, "*Chapelry*"] *of* [or, such other description as the case shall require.]
C. D. }

II. Non-Parochial Registers.

The 6 & 7 Will. IV. c. 86, intituled "An Act for registering Births, Deaths, and Marriages in England," [17th August, 1836,] establishes a general registry of births, marriages, and deaths.

6 & 7 Will. IV. c. 86.

Sect. 1, reciting "that it is expedient to provide the means for a complete register of the births, deaths, and marriages of his majesty's subjects in England; and that the 52 Geo. III. c. 146, and also the 4 Geo. IV. c. 76, are insufficient for the purpose aforesaid," enacts, "That after the 1st day of March, in the year 1837, so much of the said acts as relates to the registration of marriages shall be repealed."

Repeal of 52 Geo III. c. 146, and 4 Geo. IV. c. 76, as relates to registration of marriages.

Sect. 2. "It shall be lawful for his majesty to provide a proper office in London or Westminster, to be called 'The General Register Office,' for keeping a register of all births, deaths, and marriages of his majesty's subjects in England, and to appoint for the said office under the great seal of the United Kingdom a registrar general of births, deaths, and marriages in England, and from time to time at pleasure to remove the said registrar general, and appoint some other person in his room."

General registry offices to be provided in London or Westminster.

Sect. 3. "The lord treasurer or lords commissioners of his majesty's treasury, or any three of them, or the registrar general, subject to the approval of the said lords commissioners, shall appoint from time to time such officers, clerks, and servants as they shall deem necessary to carry on the business of the general registry office, and at pleasure remove them or any of them; and the said lord treasurer or lords commissioners shall fix the salary of the registrar general, so that the same shall not at any time exceed the sum of 1000*l.* yearly, and shall fix the salaries of the officers, clerks, and servants in fit proportion according to the duties they may have to perform."

Treasury to appoint officers and fix salary.

Sect. 4. "The salaries of the registrar general, and of the said officers, clerks, and servants, and the amount of the sums hereinafter provided to be paid to the superintendent registrars for every entry in the certified copies of the registers, and all expenses of carrying on the business of the general registry office not herein otherwise provided for, shall be paid by the said lord treasurer or lords commissioners of his majesty's treasury out of the consolidated fund of the United Kingdom of Great Britain and Ireland."

Salaries to be paid out of consolidated fund.

Sect. 5. "One of his majesty's principal secretaries of state, or the registrar general with the approbation of such principal secretary, from time to time may make regulations for the management of the said register office, and for the duties of the registrar general, clerks, officers, and servants of the said office, and of the registrars, deputy registrars, and superintendent registrars hereinafter mentioned, in the execution of this act, so that they be not contrary to the provisions herein contained;

Regulations for conduct of officers to be framed under direction of secretary of state.

6 & 7 Will. IV. c. 86.

and the regulations so made and approved shall be binding on the said registrar general, clerks, officers, and servants, and on the registrars, deputy registrars, and superintendent registrars."

Annual abstract of registers to be laid before parliament.

Sect. 6. "The registrar general shall send once in every year to one of the principal secretaries of state a general abstract of the numbers of births, deaths, and marriages registered during the foregoing year, in such form as the said secretary from time to time shall require; and every such annual general abstract shall be laid before parliament within one month after receipt thereof, or after the meeting of parliament."

Districts to be formed, and registrars and superintendent registrars to be appointed (*a*).

4 & 5 Will. IV. c. 76.

Sect. 7. "The guardians of every union declared under the provisions of an act passed in the fifth and sixth years of his present majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' and also of every parish or place in which a board of guardians shall have been established under the provisions of the last-named act, shall, on or before the 1st day of October in this year, if the said board of guardians shall have been established before the passing of this act, or within three calendar months next after the establishment of the board, if the said board shall not have been established before the passing of this act, divide the union or the parish or place of which they are the guardians into such and so many districts as they, subject to the approval of the registrar general, shall think fit; and every such division when made shall be published by the guardians within the union, parish, or place of which they are guardians, in such manner as the said registrar general shall direct; and every such district shall be called by a distinct name, and shall be a registrar's district: and the guardians shall appoint a person, with such qualifications as the registrar general may by any general rule declare to be necessary, to be registrar of births and deaths within each district, and in every case of vacancy in the office of registrar shall forthwith fill up the vacancy; and the clerk to the guardians of every such union, parish, or place shall, if he shall think fit to accept such office, and have such qualifications as the registrar general may by any general rule declare to be necessary, be the superintendent registrar thereof; and in the event of his refusal or disqualification to act in that capacity, the guardians shall appoint a person, with such qualifications as the registrar general may by any general rule declare to be necessary, to be the superintendent registrar of each union, or of such parish or place, and in every case of vacancy of the office of superintendent registrar shall forthwith fill up the vacancy; and every registrar and superintendent registrar shall hold his office during the pleasure of the registrar general (*a*)".

The acting in the office is *primâ facie* evidence of the appointment as registrar of births and deaths under this act. (*See Reg.* v. *Price*, 3 *Per. & Dav.* 421; 11 *Adol. & Ell.* 727, *S. C.; and title*, "*Evidence*," Vol. II.)

Officers of unions, &c., being dismissed by guardians, &c., to cease to act under this act.

Sect. 8. "Provided always, that in every case in which the clerk to the guardians of any union, parish, or place, or any other officer of any such union, parish, or place, shall hold any office under this act, and shall be removed by the poor law commissioners from his office in such union, parish, or place, and in every case in which any registrar or superintendent registrar shall be removed by the registrar general from his office under this act, notice of such removal shall be forthwith given by advertisement in some newspaper circulating in the county wherein the district for which such officer may act shall be; and every such person shall thenceforth cease to hold his office under this act, and shall be incapable of being re-appointed thereto: Provided also, that the appointment of any officer of any such union, parish, or place to any office under this act shall be subject to the approval of the poor law commissioners, except as hereinbefore directed with respect to the clerk to guardians of any such union, parish, or place."

(*a*) By 1 Vict. c. 22, s. 18, registrars appointed under the registration acts are exempt from serving as jurors, and from all parochial and corporate offices.

Sect. 9. "The guardians shall provide and uphold, out of the monies coming to their hands or control as such guardians, a register office, according to a plan to be approved by the registrar general, for preserving the registers to be deposited therein, as hereinafter provided; and the care of the said office and the custody of the registers deposited therein shall be given to the superintendent registrar of the union or parish or place having a board of guardians as aforesaid." 6 & 7 Will. IV. c. 86. Register offices to be provided in each union.

Sect 10. "The poor law commissioners for England and Wales shall, as soon as may be after the said first day of October, form all the parishes, townships, and places in England, in or for which a board of guardians shall not have been then established under the provisions of the said act for the amendment of the laws relating to the poor, into temporary districts, having regard in the formation thereof to the boundaries of parishes and townships, and shall appoint a registrar to each of such temporary districts, subject to being displaced as hereinafter provided; and the registrar general shall appoint a sufficient number of fit persons to be superintendent registrars for such temporary districts, subject to being displaced as hereinafter provided, and shall appoint the districts which each shall superintend." Temporary registrars and superintendent registrars to be appointed for parishes not under the poor law act.

Sect. 11. "In every case in which a board of guardians shall be established, under the provisions of the said act for the amendment of the laws relating to the poor, in or for any parish, township, or place forming part of any temporary district in or for which a registrar or superintendent registrar shall have been previously appointed as last aforesaid, and as soon as a registrar or registrars shall have been appointed for the districts into which the guardians shall have divided the union or parish or place of which they are guardians as aforesaid, and the clerk of the guardians of such union, parish, or place shall have accepted the office of superintendent registrar, or the said guardians shall have appointed a superintendent registrar for such districts, in like manner as in the unions formed before the passing of this act, every such parish or place shall cease to be a part of the temporary district to which it was so annexed by the poor law commissioners, and every registrar, deputy registrar, and superintendent registrar appointed before the election of such board of guardians as aforesaid in or for such parish, township, or place shall cease to hold their respective offices, so far as relates to such parish, township, or place, unless re-appointed." In case of subsequent unions, previous appointments to be vacated

Sect. 12. "For every district for which a registrar of births and deaths shall be appointed by the guardians as aforesaid, the registrar shall have power, subject to the approval of such guardians, and for every district for which a registrar shall be appointed by the said poor law commissioners, such registrar shall have power, subject to the approval of such commissioners, to appoint by writing under his hand, a fit person to act as his deputy in case of the illness or unavoidable absence of such registrar; and every such deputy registrar whilst so acting shall have all the powers and duties and be subject to all the provisions and penalties herein declared concerning registrars, and in case of the death of the registrar shall act as registrar until another registrar is appointed; and every registrar shall be civilly responsible for the acts or omissions of his deputy." Deputy registrars to be appointed.

Sect. 13. "The appointments of registrars, deputy registrars, and superintendent registrars, and the duplicates and certified copies of registers hereinafter mentioned, shall be exempt from all stamp duties." Appointments to be exempt from stamp duties.

Sect. 14. "The register general shall furnish to every superintendent registrar, for the use of the registrars under his superintendence, a sufficient number of strong iron boxes to hold the register books to be kept by such registrar; and every such box shall be furnished with a lock and two keys, and no more; and one of such keys shall be kept by the registrar, and the other key shall be kept by the superintendent registrar; and the register books of each district, while in the custody of the registrar and not in use, shall be always kept in the register box, and the register box shall always be left locked." Register boxes to be provided.

6 & 7 Will. IV. c. 86.

All books, &c., to be transferred on removal of registrar.

Sect. 15. "In every case in which any registrar or superintendent registrar shall be removed from or cease to hold the said office, all register boxes, keys, books, documents, and papers in his possession as such registrar or superintendent registrar shall be given as soon as conveniently may be to his successor in office; and if any person shall refuse to give up any such box, key, books, documents, or papers in such case as aforesaid, it shall be lawful for any justice of the peace for the county or other jurisdiction where such person shall be or reside, upon application made for that purpose, to issue a warrant under his hand and seal for bringing such person before any two justices of the peace for the said county or other jurisdiction, and upon such person appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to the justices that any such box, key, books, documents, or papers are in the custody or power of any such person, and that he has refused or wilfully neglected to deliver the same, the said justices are hereby required to commit such offender to the common gaol or house of correction for the said county or jurisdiction, there to remain without bail until he shall have delivered up the same, or until satisfaction shall have been given in respect thereof to the person in whose custody the same ought to be; and the said justices may grant a warrant to search for such box, key, books, documents, or papers, as in the case of stolen goods, in any dwelling-house or other premises in which any credible witness shall prove upon oath before them that there is reasonable cause to suspect the same to be; and the same when found shall be delivered to the person in whose custody they ought to be."

Registrar and deputy to dwell in the district, and their names and additions to be put on their dwelling-houses.

Sect. 16. "Every registrar and deputy registrar shall dwell within the district of which he is registrar or deputy registrar, and shall cause his name, with the addition of registrar or deputy registrar (as the case may be) for the district for which he shall be so appointed to be placed in some conspicuous place on or near the outer door of his own dwelling-house; and the superintendent registrar shall cause to be printed and published in the districts which he shall superintend a list of the name and place of abode of every registrar and deputy registrar under his superintendence."

Register books to be provided.

Sect. 17. "The registrar general shall cause to be printed on account of the said register office a sufficient number of register books for making entries of all births, deaths, and marriages of his majesty's subjects in England, according to the forms of schedules (A.) (B.) (C.) to this act annexed; and the said register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of births, deaths, and marriages respectively; and every page of each of such books shall be numbered progressively from the beginning to the end, beginning with number 1; and every place of entry shall be also numbered progressively from the beginning to the end of the book, beginning with number 1; and every entry shall be divided from the following entry by a printed line."

Registrars to register births and deaths.

Sect. 18. "The registrar general shall furnish to every superintendent registrar, for the use of the registrars under his superintendence, a sufficient number of register books of births and of register books of deaths, and of forms for certified copies thereof, as hereinafter provided, at a reasonable price, to be fixed from time to time by one of his majesty's principal secretaries of state, the cost whereof shall be borne by the union, parish, or place in or for which the superintendent registrar is appointed, and shall be paid by the guardians or by the churchwardens and overseers (as the case may be), out of the monies coming to their hands or control as such guardians or churchwardens and overseers, to the registrar, and shall be accounted for by him to the registrar general, and every registrar shall be authorized and is hereby required to inform himself carefully of every birth and every death which shall happen within

his district after the said first day of March, and to learn and register as soon after the event as conveniently may be done, without fee or reward save as hereinafter mentioned, in one of the said books, the particulars required to be registered according to the forms in the said schedules (A.) and (B.) respectively touching every such birth or every such death, as the case may be, which shall not have been already registered, every such entry being made in order from the beginning to the end of the book." 6 & 7 Will. IV. c. 86.

The court has no power to issue a *mandamus* to the registrar of births, &c., under 6 & 7 Will. IV. c. 86, commanding him to erase the entry of a birth, it appearing that the child was supposititious, and that the entry had been made for fraudulent purposes. (*Ex parte, Stanford*, 1 *Gale & D.* 428; 9 *Dowl. P. C* 927.)

Parents or occupiers of houses in which births or deaths happen, and overseers and coroners in cases of foundlings or exposed dead bodies, to give notice to the registrar.

Sect. 19. "The father or mother of any child born, or the occupier of every house or tenement in England in which any birth or death shall happen, after the said first day of March, may, within forty-two days next after the day of such birth or within five days after the day of such death respectively, give notice of such birth or death to the registrar of the district; and in case any new-born child or any dead body shall be found exposed, the overseers of the poor in the case of the new-born child, and the coroner in the case of the dead body, shall forthwith give notice and information thereof, and of the place where such child or dead body was found, to the registrar; and for the purposes of this act the master or keeper of every gaol, prison, or house of correction, or workhouse, hospital, or lunatic asylum, or public or charitable institution, shall be deemed the occupier thereof."

Parent or occupier of house required to give particulars of birth so far as known.

Sect. 20. "The father or mother of every child born in England after the said first day of March, or in case of the death, illness, absence, or inability of the father and mother, the occupier of the house or tenement in which such child shall have been born, shall, within forty-two days next after the day of every such birth, give information, upon being requested so to do, to the said registrar, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered, touching the birth of such child."

This enactment is imperative, and the party disobeying it is liable to indictment. (*Reg.* v. *Price*, 3 *Per. & D.* 421.)

Registry of children born at sea.

Sect. 21. "If any child of an English parent shall be born at sea on board of a British vessel, the captain or commanding officer of the vessel on board of which the said child shall have been born shall forthwith make a minute of the several particulars hereinbefore required to be inserted in the register touching the birth of such child, so far as the same may be known, and the name of the vessel wherein the birth took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other sooner opportunity, send a certificate of the said minute through the post office to the registrar general, who shall file the same, and enter a copy thereof under his hand in a book to be kept for that purpose in 'the General Register Office,' to be called the 'Marine Register Book,' and shall keep the said book with the other registers, according to the provisions of this act."

As to registry after the expiration of forty-two days from the birth of the child.

Sect. 22. "After the expiration of forty-two days following the day of the birth of any child it shall not be lawful for any registrar to register such birth, save as hereinafter is next mentioned; provided that, in case the birth of any child shall not have been registered according to the provisions hereinbefore contained, it shall be lawful for any person present at the birth of such child, or for the father or guardian thereof, at any time within six calendar months next after the birth, to make a solemn declaration of the particulars required to be known touching the birth of such child, according to the best of his or her knowledge and belief, and it shall thereupon be lawful for the said registrar then and there, in the presence of the superintendent registrar, to register the birth of the said child according to the information of the person making the said declaration; and in every such case the superintendent registrar before whom

6 & 7 Will. IV. c. 86.

the said declaration is made shall sign the entry of the birth as well as the registrar, and for every such registry as last aforesaid the superintendent registrar shall be entitled to have a fee of two shillings and sixpence from the person requiring the same to be registered; and the registrar, over and above the fee hereinafter enacted in respect of every birth registered by him, shall be entitled, unless the delay shall have been occasioned by his default, to have a fee of five shillings from the person requiring the same to be registered; and no register of births shall be given in evidence to prove the birth of any child wherein it shall appear that forty-two days have intervened between the day of the birth and the day of the registration of the birth of such child, unless the entry shall be signed by the superintendent registrar; and every person who shall knowingly register or cause to be registered, the birth of any child, otherwise than hereinbefore is last mentioned, after the expiration of forty-two days following the day of the birth of such child, shall forfeit and pay for every such offence a sum not exceeding 50*l.*"

Births not to be registered after six months.

Sect. 23. "After the expiration of six calendar months following the birth of any child it shall not be lawful for any registrar to register the birth of such child, and no register of births, except in the case of children born at sea, shall be given in evidence to prove the birth of any child wherein it shall appear that six calendar months have intervened between the day of the birth and the day of the registration of the birth of such child; and every person who shall knowingly register or cause to be registered the birth of any child after the expiration of six calendar months following the day of the birth of such child shall forfeit and pay for every such offence a sum not exceeding 50*l.*"

Name given in baptism may be registered within six months after registration of birth.

Sect. 24. "If any child born in England whose birth shall have been registered as aforesaid shall, within six calendar months next after it shall have been so registered, have any name given to it in baptism, the parent or guardian of such child, or other person procuring such name to be given, may, within seven days next after such baptism, procure and deliver to the registrar or superintendent registrar, in whose custody the register of the birth of the child may then happen to be, a certificate, according to the form of schedule (G.) to this act annexed, signed by the minister who shall have performed the rite of baptism, which certificate such minister is hereby required to deliver immediately after the baptism, whenever the same shall be then demanded, on payment of the fee of 1*s.*, which he shall be therefore entitled to receive; and the said registrar or superintendent registrar, upon receipt of such certificate and on payment of the fee of 1*s.*, which he shall be therefore entitled to receive, shall, without any erasure of the original entry, forthwith register therein that the child was baptised by such name, and the registrar shall thereupon certify upon the said certificate the additional entry so made, and shall forthwith send the said certificate through the post office to the registrar general." (*See R.* v. *Stanford, ante.*)

Some person present at death, or occupier of house, required to give particulars of death.

Sect. 25. "Some person present at the death, or in attendance during the last illness of every person dying in England after the said first day of March, or in case of the death, illness, inability, or default of all such persons, the occupier of the house or tenement, or if the occupier be the the person who shall have died, some inmate of the house or tenement in which such death shall have happened, shall, within eight days next after the day of such death, give information, upon being requested so to do, to the said registrar, according to the best of his or her knowledge and belief of the several particulars hereby required to be known and registered, touching the death of such person: Provided always, that in every case in which an inquest shall be held on any dead body the jury shall inquire of the particulars herein required to be registered concerning the death, and the coroner shall inform the registrar of the finding of the jury, and the registrar shall make the entry accordingly."

Registrar to make entry of finding of jury upon coroners' inquests.

Registry of persons dying at sea.

Sect. 26. "If any of his majesty's English subjects shall die at sea on board of a British vessel, the captain or commanding officer of the vessel

on board of which such death shall have happened shall forthwith make a minute of the several particulars hereinbefore required to be inserted in the register touching such death, so far as the same may be known, and the name of the vessel wherein the death took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other sooner opportunity, send a certificate of the said minute through the post office to the registrar general, who shall file the same, and enter a copy thereof under his hand in the marine register book, and keep the same with the other registers, according to the provisions of this act."

6 & 7 Will. IV. c. 86.

Sect. 27. "Every registrar, immediately upon registering any death, or as soon thereafter as he shall be required so to do, shall, without fee or reward, deliver to the undertaker or other person having charge of the funeral a certificate under his hand, according to the form of schedule (E.) to this act annexed, that such death has been duly registered, and such certificate shall be delivered by such undertaker or other person to the minister or officiating person who shall be required to bury or to perform any religious service for the burial of the dead body, and if any dead body shall be buried for which no such certificate shall have been so delivered, the person who shall bury or perform any funeral or any religious service for the burial shall forthwith give notice thereof to the registrar: Provided always, that the coroner, upon holding any inquest, may order the body to be buried, if he shall think fit, before registry of the death, and shall in such case give a certificate of his order in writing, under his hand, according to the form of schedule (F.) to this act annexed, to such undertaker or other person having charge of the funeral, which shall be delivered as aforesaid: and every person who shall bury or perform any funeral or any religious service for the burial of any dead body for which no certificate shall have been duly made and delivered as aforesaid, either by the registrar or coroner, and who shall not within seven days give notice thereof to the registrar, shall forfeit and pay any sum not exceeding 10*l.* for every such offence."

Registrar to give certificate of registry of death to undertaker, who shall deliver the same to the minister or officiating person.

Coroner may order body to be buried, and give certificate thereof.

No dead body to be buried without certificate of registry or of inquest.

Sect. 28. "Every person by whom the information contained in any register of birth or death under this act shall have been given shall sign his name, description, and place of abode in the register; and no register of birth or death, according to this act, shall be given in evidence which shall not be signed by some person professing to be the informant, and to be such party as is herein required to give such information to the registrar."

Register to be signed by the informant.

Sect. 29. "Every registrar shall make out an account four times in every year of the number of births and deaths which he shall have registered since the last quarterly account, and the superintendent registrar shall verify and sign the same, and the guardians or overseers of the parish, township, or place in or for which he shall be registrar, on production of the said account so verified and signed, shall pay to the said registrar, out of the monies in their hands or power as such guardians or overseers, such sums as he shall be entitled to receive on the said account according to the following scale; (that is to say,) for the first twenty entries of births and deaths in every year which he shall have registered, whether the same be of births or of deaths indiscriminately, 2*s.* 6*d.* each, and 1*s.* for every subsequent entry of births or deaths in each year; and in the case of an union the said several sums shall be charged to the account of the parishes in which such births or deaths respectively shall have occurred."

Registrars to make out accounts quarterly.

Guardians or overseers to pay registrars.

Sect. 30. "The registrar general shall furnish or cause to be furnished to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, and also to every person whom the recording clerk of the society of friends commonly called Quakers, at their central office in London, shall from time to time certify in writing under his hand to the registrar general to be a registering officer in England of the said society, and also to every person whom the president for the time being of the London committee of deputies of

Marriage register books to be provided.

6 & 7 Will. IV. c. 86.

the British Jews shall from time to time certify in writing under his hand to the registrar general to be the secretary of a synagogue in England of persons professing the Jewish religion, a sufficient number in duplicate of marriage register books, and forms for certified copies thereof, as hereinafter provided; and the cost of all such books and forms shall be paid by the churchwardens and overseers of the parish or chapelry out of the monies in their hands as such churchwardens and overseers, or by the registering officer or secretary respectively, to whom the same shall be furnished."

Marriage registers to be kept in duplicate.

Sect. 31. "Every clergyman of the church of England, immediately after every office of matrimony solemnized by him, shall register in duplicate in two of the marriage register books the several particulars relating to that marriage according to the form of the said schedule (C.); and every such registering officer of the Quakers, as soon as conveniently may be after the solemnization of any marriage between two Quakers in the district for which he is registering officer, and every such secretary of a synagogue, immediately after every marriage solemnized between any two persons professing the Jewish religion, of whom the husband shall belong to the synagogue whereof he is secretary, shall register or cause to be registered in duplicate in two of the said marriage register books the several particulars relating to that marriage according to the form of the said schedule (C.); and every such registering officer or secretary, whether he shall or shall not be present at such marriage, shall satisfy himself that the proceedings in relation thereto have been conformable to the usages of the said society, or of the persons professing the Jewish religion, as the case may be; and every such entry as hereinbefore is mentioned (whether made by such clergyman or by such registering officer or secretary respectively as aforesaid) shall be signed by the clergyman or by the said registering officer or secretary as the case may be, and by the parties married, and by two witnesses, and shall be made in order from the beginning to the end of each book, and the number of the place of entry in each duplicate marriage register book shall be the same."

Certified copies of registers of births and deaths to be sent quarterly, and the register books when filled, to the superintendent registrar.

Sect. 32. "In the months of April, July, October, and January, on such days as shall from time to time be appointed by the registrar general, every registrar shall make, and deliver to the superintendent registrar of his district, on durable materials, a true copy certified by him under his hand according to the form of schedule (D.) to this act annexed, of all the entries of births and deaths in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July in the year 1837, and to contain all the entries made up to that time; and the superintendent registrar shall verify the same, and if found to be correct shall certify the same under his hand to be a true copy; and if there shall have been no birth or death registered since the delivery of the last certificate the registrar shall certify the fact, and such certificate shall be delivered to the superintendent registrar as aforesaid, and countersigned by him; and the registrar shall keep safely each of the said register books until it shall be filled, and shall then deliver it to the superintendent registrar, to be kept by him with the records of his office."

Duplicates and certified copies of registers of marriages to be sent to superintendent registrar.

Sect. 33. "The rector, vicar, or curate of every such church and chapel, and every such registering officer and secretary, shall, in the months of April, July, October, and January respectively, make and deliver to the superintendent registrar of the district in which such church or chapel may be situated, or which may be assigned by the registrar general to such registering officer or secretary, on durable materials, a true copy certified by him under his hand of all the entries of marriages in the register book kept by him since the last certificate, the first of such certificates to be given in the month of July, 1837, and to contain all the entries made up to that time, and if there shall have been no marriage entered therein since the last certificate, shall certify the fact under his hand, and shall keep the said marriage register books safely until the same shall be

filled; and one copy of every such register book, when filled, shall be delivered to the superintendent registrar of the district in which such church or chapel may be situated, or which shall have been assigned as aforesaid, to such registering officer or secretary, and the other copy of every such register book kept by any such rector, vicar, or curate, shall remain in the keeping of such rector, vicar, or curate, and shall be kept by him with the registers of baptisms and burials of the parish or chapelry within which the marriages registered therein shall have been solemnized; and the other copy of every such register book of marriages among the people called Quakers, and among persons professing the Jewish religion respectively, shall remain under the care of the said people or persons respectively, to be kept with their other registers and records, and shall, for the purposes of this act, be still deemed to be in the keeping of the registering officer or secretary for the time being respectively." 6 & 7 Will. IV. c. 86.

Sect. 34. "Every superintendent registrar shall, four times in every year, on such days as shall be therefore named by the registrar general, send to the registrar general all the certified copies of the registers of births, deaths, and marriages which he shall have so received during the three calendar months next preceding such quarterly days of transmission respectively; and if it shall appear, by interruption of the regular progression of numbers or otherwise, that the copy of any part of any book has not been duly delivered to him, he shall procure as far as possible, consistently with the provisions of this act, that the same may be remedied and supplied; and every such superintendent registrar shall be entitled to receive the sum of 2*d.* for every entry in such certified copies; and every superintendent registrar shall make out an account four times in every year of the number of entries in the certified copies sent to him during the last quarter, and the certified copies so sent to the general registry office shall be thereafter kept in the said office in such order and manner as the registrar general, under the direction of the secretary of state, shall think fit, so that the same may be most readily seen and examined." Superintendent registers to send certified copies of registers to the general register office.

Sect. 35. "Every rector, vicar, or curate, and every registrar, registering officer, and secretary who shall have the keeping for the time being of any register book of births, deaths, or marriages, shall at all reasonable times allow searches to be made of any register book in his keeping, and shall give a copy certified under his hand of any entry or entries in the same, on payment of the fee hereinafter mentioned; (that is to say,) for every search extending over a period not more than one year the sum of 1*s.*, and 6*d.* additional for every additional year, and the sum of 2*s.* 6*d.* for every single certificate." Searches may be made, and certificates given by the person keeping the registers.

Sect. 36. "Every superintendent registrar shall cause indexes of the register books in his office to be made, and kept with the other records of his office; and that every person shall be entitled at all reasonable hours to search the said indexes, and to have a certified copy of any entry or entries in the said register books under the hand of the superintendent registrar, on payment of the fees hereinafter mentioned; (that is to say,) for every general search the sum of 5*s.*, and for every particular search the sum of 1*s.*, and for every such certified copy the sum of 2*s.* 6*d.*" Indexes to be made at the superintendent registrar's office, and persons allowed to search them.

Sect. 37. "The registrar general shall cause indexes of all the said certified copies of the registers to be made and kept in the general register office; and that every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said indexes between the hours of ten in the morning and four in the afternoon of every day except Sundays, Christmas Day, and Good Friday, and to have a certified copy of any entry in the said certified copies of the registers; and for every general search of the said indexes shall be paid the sum of 20*s.*, and for every particular search the sum of 1*s.*, and for every such certified copy the sum of 2*s.* 6*d.*, and no more, shall be paid to the registrar general or such other officer as shall be appointed for that purpose on his account." Indexes to be kept at general register office, searches allowed, and certified copies given.

6 & 7 Will. IV. c. 86.

Certified copies given at general registry office to be sealed.

Sect. 38. "The registrar general shall cause to be made a seal of the said register office, and the registrar general shall cause to be sealed or stamped therewith all certified copies of entries given in the said office; and all certified copies of entries purporting to be sealed or stamped with the seal of the said register office shall be received as evidence of the birth, death, or marriage to which the same relates, without any further or other proof of such entry; and no certified copy purporting to be given in the said office shall be of any force or effect which is not sealed or stamped as aforesaid."

Fees for searches in the general register office to be accounted for in the exchequer.

4 & 5 Will. IV. c. 15.

Sect. 39. "Every sum received under the provisions of this act by or on account of the registrar general shall be accounted for and paid by the registrar general, at such times as the lords commissioners of the treasury from time to time shall direct, into the Bank of England, to the credit of his majesty's exchequer, according to the provisions of an act passed in the fourth and fifth years of his majesty, intituled, 'An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster.'"

Clergymen, &c., may ask parties married the particulars required.

Sect. 40. "It shall be lawful for every clergyman of the church of England who shall solemnize any marriage in England, and for every registering officer of the Quakers, and every secretary of a synagogue, after the said first day of March, to ask of the parties married the several particulars herein required to be registered touching such marriage."

Penalty for wilfully giving false information.

Sect. 41. "Every person who shall wilfully make or cause to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false statement touching any of the particulars herein required to be known and registered, shall be subject to the same pains and penalties as if he were guilty of perjury."

Penalty for not duly registering births, deaths, and marriages, or for losing or injuring the registers.

Sect. 42. "Every person who shall refuse or without reasonable cause omit to register any marriage solemnized by him, or which he ought to register, and every registrar who shall refuse or without reasonable cause omit to register any birth or death of which he shall have had due notice as aforesaid, and every person having the custody of any register book, or certified copy thereof or of any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit a sum not exceeding 50*l.* for every such offence."

Penalty for destroying or falsifying register books.

Sect. 43. "Every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any such register book, or any part or certified copy of any part thereof, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register book or certified copy thereof, or shall wilfully insert or cause to be inserted in any register book or certified copy thereof any false entry of any birth, death, or marriage, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any register book, knowing the same register to be false in any part thereof, or shall forge or counterfeit the seal of the register office, shall be guilty of felony." (*See* "*Forgery*," Vol. III.)

Accidental errors may be corrected.

Sect. 44. Provided always, "that no person charged with the duty of registering any birth, death, or marriage, who shall discover any error to have been committed in the form or substance of any such entry shall be therefore liable to any of the penalties aforesaid if within one calendar month next after the discovery of such error, in the presence of the parents of the child whose birth may have been so registered, or of the parties married, or of two persons attending upon any person in his or her last illness whose death may have been so registered, or in case of the death or absence of the respective parties aforesaid, then in the presence of the superintendent registrar and of two other credible witnesses who shall respectively attest the same, he shall correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be

made: Provided also, that in the case of a marriage register he shall make the like marginal entry, attested in like manner in the duplicate marriage register book to be made by him as aforesaid, and in every case shall make the like alteration in the certified copy of the register book to be made by him as aforesaid, or in case such certified copy shall have been already made, provided he shall make and deliver in like manner a separate certified copy of the original erroneous entry, and of the marginal correction therein made."

Recovery of penalties.

Sect. 45. "All fines and forfeitures by this act imposed, unless otherwise directed, shall be recovered before any two justices of the peace for the county, city, or place where the offence shall have happened, upon the information or complaint of any person; and if on the conviction of the offender, either on his or her confession, or by the oath of any one or more credible witness or witnesses, (which oath such justices are empowered to administer) such fines or forfeitures, with the costs of the conviction, shall not be forthwith paid, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such justices; and for want of distress such justices may commit every such offender to the common gaol or house of correction for the county, city, or place where the offender shall be committed, without bail or mainprize, for any term not exceeding one calendar month, unless such fine and forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid; and one moiety of all such fines and forfeitures shall go to the person who shall inform and sue or prosecute for the same, and the other moiety shall go to the registrar general, or to such other person as the lords commissioners of the treasury shall appoint, for the use of his majesty; and no distress made by virtue of this act shall be deemed unlawful, nor shall the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, or warrant of distress, or on account of any irregularity which shall be afterwards committed by the party distraining, but the person or persons aggrieved by such irregularity shall recover full satisfaction for the special damages sustained in an action on the case."

Appeal.

Sect. 46. "In all cases where the sum adjudged to be paid on any such summary conviction shall exceed 5*l.*, any person convicted may appeal to the next court of general or quarter sessions which shall be holden not sooner than twelve days after the day of such conviction for the county or other district wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizances being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment."

No certiorari. Want of form.

Sect. 47. "No such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of his majesty's superior courts of record, and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a valid conviction to sustain the same."

Correspondence

Sect. 48. "The registrar general may receive and send by the general

6 & 7 Will. IV. c. 86.

of registrar general relating to this act to be free of postage.

post from and to places in England all letters and packets relating exclusively to the execution of this act free from the duty of postage, provided that such letters and packets as shall be sent to the registrar general be directed to the 'Registrar General of Births, Deaths, and Marriages,' at his office, and that all such letters and packets as shall be sent by the registrar general shall be in covers, with the words 'Registrar General of Births, Deaths, and Marriages,' printed on the same, and be sealed with the seal of the said register office, and be signed on the outside thereof under such words with the name of such person as the said registrar general, with the consent of the lords commissioners of the treasury, or any three or more of them, shall appoint, in his own handwriting, (such name to be from time to time sent to the secretary of the general post-office in London,) and under such other regulations as the said lords commissioners, or any three or more of them, shall think fit; and if the person so to be appointed shall subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate exclusively to the execution of this act, or if the person so to be appointed, or any other person, shall send or cause to be sent under any such cover any letter, paper, or writing, or any inclosure, other than shall relate exclusively to the execution of this act, every person so offending shall forfeit and pay the sum of 100*l.*, and be dismissed from his office; one moiety of such penalty to be paid to the use of his majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same; to be sued for and recovered in any of his majesty's courts of record at Westminster."

Registers of baptisms and burials may be kept as heretofore.

Sect. 49 provides, "that nothing herein contained shall affect the registration of baptisms or burials as now by law established, or the right of any officiating minister to receive the fees now usually paid for the performance or registration of any baptism, burial, or marriage."

Registrar general to furnish notices to guardians of unions, &c., specifying acts required to be done by parties registering.

Sect. 50. "The said registrar general shall, within three calendar months after his appointment to such office, furnish to the respective guardians of every union, parish, or place printed notices, which the said guardians shall, as soon as conveniently may be after the receipt thereof, cause to be fixed or placed on the outside of the several church and chapel doors, or other public and conspicuous buildings or places, within their respective unions, parishes, or places, and which said notices shall specify the several acts required to be done by persons who may be desirous of solemnizing marriage, or of registering the birth of any child or the death of any person, under the provisions of this act."

[See the schedule of the 6 & 7 Will. IV. c. 86, *post.*]

1 Vict. c. 22.

By 1 Vict. c. 22, entitled, "An Act to explain and amend Two Acts passed in the last Session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England," [30th June, 1837,] sect. 1, reciting that by the 6 & 7 Will. IV. c. 85, (which *see, title*, "*Marriage*," *ante*, 79,) and 6 & 7 Will. IV. c. 86, sundry provisions were made for the duties of superintendent registrars and also of registrars and deputy registrars of births, deaths, and marriages, which several provisions require to be further explained and amended, and that the recited acts require amendment in other respects, it is enacted, "That where in the said act for marriages in England provision is made for giving notice of marriage to any registrar, and where in the last recited act, or any schedule thereunto annexed, mention is made of any such notice, or of the registrar's certificate of any such notice, the same shall be construed respectively to mean the notice to be given to the superintendent registrar, and the certificate thereof to be issued by the superintendent registrar, according to the provisions for that purpose contained in the last recited act."

Meaning of the words "notice to the registrar," and "registrar's certificate."

Certificate of baptismal name to be made by registrar or su-

Sect. 2. "And whereas by the said act for registering births, deaths, and marriages it is provided, that in the case of any child to which any name shall be given in baptism after its birth shall have been registered

under the provisions of the said act, a certificate shall be delivered in manner provided by the said act, signed by the minister who shall have performed the rite of baptism, and that the registrar shall certify upon the said certificate the additional entry in the register book thereupon required by the said act to be made, and shall forthwith send the said certificate through the post office to the registrar general; be it enacted, That the certificate that such additional entry has been made shall be made and sent as aforesaid by the registrar or superintendent registrar, as the case may be, to whom the minister's certificate shall have been delivered according to the provisions of the said act."

1 Vict. c. 22.

Superintendent registrar, as the case may be.

Sect. 3. "That every superintendent registrar who shall knowingly and wilfully issue any licence for marriage after the expiration of three calendar months after the notice shall have been entered by the superintendent registrar, as provided by the said act for marriages, or who shall knowingly and wilfully solemnize or permit to be solemnized in his office any marriage in the last recited act declared to be null and void, shall be guilty of felony."

Superintendent registrars unduly issuing licences, or solemnizing marriages guilty of felony.

Sect. 4. "And whereas in that part of the said act for registering births, deaths, and marriages in England, which provides for the recovery of penalties the word 'offender' has been once inserted by mistake instead of the word 'offence;' be it enacted, That in all cases in which any justices are by the last recited act authorized to imprison any offender against the last recited act, the place of imprisonment shall be the common gaol or house of correction for the county, city, or place where the offence shall be committed."

Whereunto committals shall be.

Sect. 5. "That for the purpose of enabling any person to recover costs and damages in any action, as provided by the said act for marriages, from any person who shall have entered a caveat on frivolous grounds with the superintendent registrar, a copy of the declaration of the registrar general purporting to be sealed with the seal of the general register office shall be evidence that the registrar general has declared such caveat to have been entered on frivolous grounds, and that they ought not to obstruct the grant of the licence or issue of the certificate, as the case may be; and such declaration shall have the effect of the declaration required in such case by the said act for marriages."

Registar general's certificate of frivolous caveat to be evidence.

Sect. 6. "And whereas it hath been doubted, under the provisions of the said act for registering births, deaths, and marriages in England, when the registration of the births and deaths of persons born and dying at sea ought to begin; be it enacted, That the marine register books shall begin with the birth and death respectively which shall happen of persons born or dying at sea after the last day of June, 1837, and of which a certificate shall be first sent to the registrar general according to the provisions of the last recited act, and shall not contain any registry of the birth or death of any person born or dying at sea before the first day of July, 1837."

Commencement of marine register book.

Sect. 7 relates to the privilege of franking letters by and to the registrar general. (*See ante*, "*Post Office.*")

Sect. 8. "That it shall be lawful for the registrar general, if he shall think fit, to direct that the place of birth or death of any person whose birth or death shall be registered under the said act for registering births, deaths, and marriages shall be added to the entry in such manner as the registrar general shall direct; and such addition, when so made, shall be taken to all intents to be part of the entry in the register."

Place of birth or death may be inserted in the register.

Sect. 9. "That it shall be lawful for the registrar general, with the consent of the poor law commissioners, to direct that any place lying wholly within but not being part of any union, parish, or place for which a board of guardians shall have been established under the provisions of an act passed in the fourth and fifth years of his late majesty king William the Fourth, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' shall be part of any one or more registrars districts within such union,

Provision for including extra-parochial places in register districts.

4 & 5 Will. IV. c. 76.

1 Vict. c. 22.

parish, or place, and within the superintendence of the superintendent registrar thereof, or if not lying wholly within any one such union, parish, or place as last aforesaid, then to be for those purposes annexed to such union, parish, or place as last aforesaid, as the registrar general, with the consent of the poor law commissioners, shall direct."

Registrar general may unite districts.

Sect. 10. "That it shall be lawful for the registrar general, if he shall see fit, with the approval of one of her majesty's principal secretaries of state, to unite any two or more unions, parishes, or places for which a board of guardians shall have been established under the act last aforesaid, or any two or more superintendent registrars districts, into one superintendent registrar's district; and in every such case of union the registrar general shall declare by which board of guardians the superintendent registrar shall thence orward be appointed; and the superintendent registrar of the union, parish, or place for which such board is established shall from the time of such union be the sole superintendent registrar of such united district; and every provision of the said acts for marriages, and for registering births, deaths, and marriages, relating to superintendent registrars, and to the districts under their superintendence, and to boards of guardians within such districts, shall apply to every such superintendent registrar, and to every such district, and to the board of guardians so selected and declared; and all register boxes, keys, books, documents, and papers in the possession of any superintendent registrar who shall cease to be such under the provisions of this act shall be delivered to the superintendent registrar of the united district, and may be recovered in the manner provided by the last recited acts, and shall be removed from the office of the person ceasing to be superintendent registrar to the office of the superintendent registrar of the united district; and the office of every superintendent registrar ceasing to be such under the provisions of this act shall from the time of such union as last aforesaid cease to be a register office within the meaning of the said last recited acts, and it shall be lawful for the commissioners of her majesty's treasury, or any three of them, to cause to be repaid out of the consolidated fund such sum as the board of guardians shall have legally paid or for which they may have lawfully become liable as such guardians, for the sole purpose of providing a register office; and in every case in which such union as last aforesaid shall be intended to take place the registrar general shall give public notice thereof, and of the time when the same shall take effect, by advertisement in the '*London Gazette*,' and in some newspaper circulating within the county; and every such union shall take effect from the day named in such advertisement in the '*London Gazette*.'"

Registrar general may divide unions or districts.

Sect. 11. "That it shall be lawful for the registrar general, if he shall see fit, with the approval of one of her majesty's principal secretaries of state, to divide any union, parish, or place, or any superintendent registrar's district, into two or more superintendent registrars districts, and notice of every such division shall be published in the '*London Gazette*;' and in every such case the guardians shall appoint a sufficient number of persons, with such qualifications as the registrar general may by any general rule declare to be necessary, to be superintendent registrars of the new districts, and shall also appoint the district for which the clerk to the guardians or other person who may have been theretofore appointed as superintendent registrar of the whole union, parish, or place, shall continue to be superintendent registrar; and every provision of the said recited acts for marriages, and for registering births, deaths, and marriages, relating to superintendent registrars, and the districts under their superintendence, shall apply to every superintendent registrar so appointed, and to the district for which he shall be so appointed."

As to locality of superintendent registrar's office.

Sect. 12. "That the superintendent registrar's office shall be taken, for the purposes of the said acts for marriages, and for registering births, deaths, and marriages, and of this act, to be within the district of which it is the register office, although not locally situated therein."

1 Vict. c. 22.

Sect. 13. "That in case any such board of guardians of any union, parish, or place as aforesaid shall not have divided such union, parish, or place into registrars districts, with the approval of the registrar general, before the first day of July now next ensuing in case the said board was established before the first day of March now last passed, or within three calendar months next after their establishment in case the said board shall have been established on or after the said first day of March, the poor law commissioners for England and Wales shall divide such union, parish, or place into registrars districts, and shall appoint a registrar to each of such districts, qualified according to the provisions of the said act for registering births, deaths, and marriages; and every registrar so appointed shall hold his office during the pleasure of the registrar general."

If guardians neglect to form registrar's districts, poor law commissioners shall form them and appoint registrars thereto.

Sect 14. "That in every case in which the clerk to any such board of guardians shall not think fit or shall be disqualified to accept the office of superintendent registrar, and the guardians shall refuse or neglect during fourteen days after being required so to do by the registrar general to appoint a superintendent registrar properly qualified, and in every case of vacancy of the office of registrar or superintendent registrar in any such union, parish, or place in which the guardians shall refuse or neglect during fourteen days after such vacancy to appoint a registrar or superintendent registrar properly qualified, the appointment shall lapse to the registrar general."

If guardians neglect to appoint registrars or superintendent registrars the registrar general to appoint them.

Sect. 15. "That the registrar general shall have power, subject to the approval of the commissioners of the treasury to appoint by writing under his hand a fit person to act as his assistant in the case of the illness of the registrar general; and every such assistant, while so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said acts for marriages, and for registering births, deaths, and marriages, in England, and by this act, or any of them; except that such assistant shall not have power to make or declare any general rule, or to rescind or alter any order, regulation, or approval signified and made by the registrar general in writing under his hand, or to dismiss any person from any office holden during the pleasure of the registrar general."

Registrar general may appoint an assistant to act for him in certain cases.

Sect. 16. "That every superintendent registrar shall have the power, subject to the approval of the registrar general, to appoint by writing under his hand a fit person to act as his deputy in case of the illness or absence of such superintendent registrar; and every such deputy superintendent registrar, whilst so acting, shall have all the powers and duties and be subject to all the provisions and penalties declared by the said acts for marriages, and for registering births, deaths, and marriages, in England, and by this act, concerning superintendent registrars; and in case of the death of the superintendent registrar shall act as superintendent registrar until another be appointed; and every superintendent registrar shall be civilly responsible for the acts and omissions of his deputy."

Superintendent registrar may appoint a deputy to act for him in certain cases.

Sect. 17. "That whenever there are two or more clerks to the guardians of any union, parish, or place, established under the provisions of the said act for amending the laws relating to the poor, one only of whom shall possess such qualifications as the registrar general by any general rule hath declared or shall declare to be necessary, or one only of whom shall think fit to accept the office of superintendent registrar of such union, parish, or place, such one shall be the superintendent registrar of such union, parish, or place; and if two or more of such clerks shall possess such qualifications as aforesaid, and be willing to accept such office, then such guardians shall elect and choose one of such clerks (possessing such qualifications as aforesaid) to be the superintendent registrar of such union, parish, or place; and that no other person shall be or be elected or appointed to be superintendent registrar of any such union, parish, or place, unless all the clerks to the board of guardians (possessing such qualifications as aforesaid) shall not think fit to accept such office."

If more than one clerk to a board of guardians, which of them to be superintendent registrar.

Sect. 18. "That every registrar of births and deaths and every registrar

Exemption of

1 Vict. c. 22.

registrars from parochial and corporate offices.

of marriages appointed under the provisions of the said acts or either of them shall be freed and exempted from being returned and from serving on any jury or inquest, and from every parochial and corporate office whatever."

The appointment of a person who is registrar of births, deaths, and marriages as overseer of the poor, is not void, and in order to render it so, the overseer must appeal to the sessions under the 43 Eliz. c. 2, s. 6. (*Reg.* v. *Chester* (*Justices*), 4 *Jur.* 474.—*B. C.*)

Guardians may borrow money for providing register offices.

Sect. 19. "That for better enabling fit register offices to be provided it shall be lawful for any such board of guardians to borrow money for that purpose, and to charge the amount of the sum borrowed on the future poor rates of the parish, union, or place of which they are the guardians, in the manner provided by the said act for amending the laws relating to the poor with respect to monies borrowed for building workhouses for the relief of the poor; save only that the yearly instalments by which any money borrowed as aforesaid shall be repaid shall not be less than one twentieth of the sum borrowed, with interest on the same, and need not be more in any one year."

If guardians neglect to provide a register office, commissioners of treasury may direct it to be provided.

Sect. 20. "That in any case in which any such board of guardians shall neglect or refuse to provide and uphold a register office according to the provisions of the said act for registering births, deaths, and marriages, it shall be lawful for the commissioners of the treasury, or any three of them, on the application of the registrar general, to give directions for providing and upholding the same, and to expend a sum not exceeding three hundred pounds in providing the same, and also all sums needful for the repair and maintenance thereof from time to time, in case the guardians shall continue to refuse or neglect to repair and uphold the same; and it shall be lawful for the said commissioners, or any three of them, to make an order from time to time on such guardians for the repayment, out of the monies coming to their hands as such guardians, of all sums so to be from time to time expended, and such order shall be binding upon the said guardians, and the guardians shall also be bound to pay out of the monies coming to their hands as such guardians all costs and expences incurred by or under the direction of the said commissioners in making and enforcing such order."

Substitute for register office until the same is provided.

Sect. 21. "That until a register office shall be provided in any superintendent registrar's district the superintendent registrar shall appropriate some fit room or rooms to be approved by the registrar general, as the superintendent registrar's office of that district."

Registrar general general to limit the number of registrars of marriage.

Sect. 22. "That the registrar general shall be authorized to fix from time to time the number of registrars of marriage to be appointed by any superintendent registrar; and no superintendent registrar shall have power to appoint more than the number so fixed for him to appoint."

Provision for marriages in the Welsh tongue.

Sect. 23. "That the registrar general under the direction of one of her majesty's principal secretaries of state, shall take order that the solemn declaration and form of words provided to be used in the case of marriages under the said act for marriages be truly and exactly translated into the Welsh tongue, and shall cause the same so translated to be furnished to every registrar of marriages throughout Wales, and in all places where the Welsh tongue is commonly used; and it shall be lawful to use the declaration and form of words so translated, and published by authority, in all places where the Welsh tongue is commonly used or preferred, in such manner and form and to the same intents and purposes as by the said act is prescribed in the English tongue."

Notices of marriage to be suspended in the superintendent registrar's office, instead of being read at the meetings of guardians, and particulars of

Sect. 24. "And whereas by the said act for marriages in England provision is made for the transmission of notices of marriage to the clerk to the guardians of the poor law union, or of the parish or place comprising the district of a superintendent registrar, and for the reading of the same at certain meetings of such guardians: and whereas it may happen in certain superintendent registrar's districts that there may be no such guardians; be it therefore enacted, That in every such case, but only

until the election of such board of guardians and of a clerk to their board, every notice of marriage given according to the provisions of the said act for marriages, or a true and exact copy thereof, under the hand of the superintendent registrar, shall be suspended in some conspicuous place in the office of the superintendent registrar during seven successive days, if the marriage is to be solemnized by licence, or twenty-one successive days if the marriage is to be solemnized without licence, before any marriage shall be solemnized in pursuance of such notice; and the particulars of every such notice shall be sent by the superintendent registrar to every registrar of marriages within his district, and shall be open to the inspection of every one who shall apply at reasonable times to such registrar to inspect the same."

1 Vict. c. 22.

the same sent to the registrar.

Sect. 25. "And whereas by the said act for registering births, deaths, and marriages it is provided that the cost of all marriage register books and forms for certified copies thereof, furnished to the rector, vicar, or curate of every church and chapel in England wherein marriages may lawfully be solemnized, shall be paid by the churchwardens and overseers of the parish or chapelry out of the monies in their hands as such churchwardens or overseers, and that the cost of register books of births and of register books of deaths, and of forms for certified copies thereof, shall be paid by the guardians or by the churchwardens and overseers (as the case may be) out of the monies coming to their hands or control as such guardians or churchwardens and overseers; be it enacted, for removing doubt as to the fund chargeable therewith, That the cost of all such books and forms shall be borne by the union, parish, or place in and for which the superintendent registrar is appointed who superintends the registrar for whose use such books were provided, or to whom such rector, vicar, or curate is by the said act directed to deliver one copy of such register; and such cost shall be paid to the said superintendent registrar by the guardians or by the churchwardens and overseers, as the case shall be, out of the monies coming into their hands as such guardians or such churchwardens and overseers for the relief of the poor."

Cost of parochial marriage register books and forms, how to be defrayed.

Sect. 26. "That the certified copies of the entries of births, deaths, and marriages, required by the said acts for marriages, and for registering births, deaths, and marriages, or by an act passed in this session of parliament, intituled, 'An Act to suspend for a limited Time the Operation of Two Acts passed in the last Session of Parliament for Registering Births, Deaths, and Marriages in England, and for Marriages in England,' to be made and delivered to the superintendent registrar, and also the certificates to be made and delivered to the superintendent registrar that there has been no birth, death, or marriage registered since the delivery of the last certificate, shall in every case be made up and refer respectively to the last days of March, June, September, and December then next preceding, and not to the time of the making or delivery of such certified copy or certificate when made on any subsequent day."

Certified copies of register books to be made up quarterly.

7 Will. IV. c. 1.

Sect. 27. "And whereas it is required by the said act for registering births, deaths, and marriages, that every rector, vicar, and curate shall register in duplicate the particulars of every marriage solemnized by him, one of which registers he is also required to deliver when filled to the superintendent registrar of the district in which such church or chapel may be situated, and also four times in every year to deliver to the said superintendent registrar a true copy, certified by him under his hand, of all the entries of marriages in the register book kept by him since the last certificate; be it enacted, That the said superintendent registrar shall pay or cause to be paid to the said rector, vicar, or curate the sum of sixpence for every entry contained in such certified copy, which sum shall be reimbursed to the said superintendent registrar by the guardians or overseers of the union, parish, or place for which he shall be appointed superintendent registrar as aforesaid, in like manner as by the said act is provided for the payment of the registrar on production of his accounts to the superintendent registrar."

Clergymen to be paid for making register in duplicate.

1 Vict. c. 22.

Penalty for neglecting to send certified copies of register books.

Sect. 28. "That every person who under the provisions of the said acts for marriages, and for registering births, deaths, and marriages, or either of them, as amended by this act, is required to make and deliver to any superintendent registrar a certified copy of the entries of any births, deaths, or marriages registered by him, or the certificate required by the said acts as amended by this act that there have been no entries since the last certificate, and who after being duly required to deliver such certified copy or such certificate as aforesaid shall refuse or during one calendar month neglect so to do, shall be liable for every such offence to forfeit a sum not exceeding ten pounds, to be recovered as other penalties for offences against the said acts are made recoverable: Provided always, that in such case a moiety of the penalty shall not go to the informer, but the whole shall go to the registrar general, or such other person as the commissioners of the treasury shall appoint, for the use of her majesty."

Certificates, &c. required to be given to any superintendent registrar may be given to any registrar, who is to forward the same, &c.

Sect. 29. "That in every case in which any rector, vicar, or curate is required by either of the said acts for marriages, and for registering births, deaths, and marriages, or by this act, to give or deliver any notice, certificate, or certified copy to any superintendent registrar, it shall be sufficient for such rector, vicar, or curate to give or deliver the same to some registrar under the superintendence of such superintendent registrar; and every registrar on receiving any such notice, certificate, or certified copy shall give or deliver the same to the superintendent registrar; and each superintendent registrar shall direct the registrars of births and deaths under his superintendence quarterly or oftener if he shall think fit or shall be so ordered to do by the registrar general to collect the notices, certificates, and certified copies from every rector, vicar, and curate within his district."

Authority for administering oaths.

Sect. 30. "And for removing of all doubt with regard to the administration of oaths, be it enacted, That every person before whom by the said acts or either of them an oath is directed to be taken is hereby authorized to administer the same."

Limitation as to summary convictions.

Sect. 31. "That the prosecution for every offence punishable upon summary conviction by virtue of the said acts or this act shall be commenced within three months after the commission of such offence."

Stamp duty not payable on licensing chapels for marriages.

Sect. 32. "That no stamp duty shall be required nor shall any duty be chargeable on any licence under the hand and seal of any bishop, or any other instrument necessary for authorizing the solemnization of marriages in any chapel according to the provisions of the said act for marriages."

Banns may be published in chapels where marriages may be solemnized.

Sect. 33. "That the banns of marriage of any persons may be published in any chapel licensed by the bishop, according to the provisions of the said act for marriages, for the solemnization of marriages, in which those persons might lawfully be married; and instead of the notice required by the said act the words 'banns may be published and marriages may be solemnized in this chapel' shall be placed in some conspicuous part in the interior of every such chapel."

Marriages may be in licensed chapels, though only one of the parties is resident in the district. Publication of banns where the parties reside in different districts.

Sect. 34. "And whereas doubts may arise whether under the said recited acts it is lawful for the bishop to license chapels for marriages between parties one only of whom resides within the district specified in such licence; be it therefore enacted and declared, That all such licences shall be construed to extend to and authorize marriages in such chapels between parties one or both of whom is or are resident within the said district: Provided always, that where the parties to any marriage intended to be solemnized after publication of banns shall reside within different ecclesiastical districts the banns for such marriage shall be published as well in the church or chapel wherein such marriage is intended to be solemnized as in the chapel licensed under the provisions of the said recited act for the other district within which one of the parties is resident, and if there be no such chapel then in the church or chapel in which the banns of such last-mentioned party might be legally published if the said recited act had not been passed."

Sect. 35. "And whereas certain provisions are made in the act intituled 'An Act for Marriages in England,' relating to the celebration of marriages in separate buildings; be it enacted, That any building which shall have been licensed and used during one year next before registration for public religious worship as a Roman Catholic chapel exclusively shall be taken to be a separate building for the purpose of being registered for the celebration of marriages, notwithstanding the same shall be under the same roof with any other building, or shall form a part only of a building." 1 Vict. c. 22.

Any building used exclusively as a Roman Catholic chapel for one year may be registered for celebration of marriages.

Sect. 36. "And whereas it is enacted in the said recited act for marriages in England, that where by any law or canon in force before the passing of the said act it is provided that any marriage may be solemnized after publication of banns such marriage may be solemnized in like manner on production of the registrar's certificate as thereinafter provided; be it enacted, That the giving of notice to the superintendent registrar, and the issue of the superintendent registrar's certificate, as in the said act and by this act provided, shall be used and stand instead of the publication of banns to all intents and purposes where no such publication shall have taken place; and every parson, vicar, minister, or curate in England shall solemnize marriage after such notice and certificate as aforesaid in like manner as after due publication of banns; Provided always, that the church wherein any marriage according to the rites of the Church of England shall so be solemnized shall be within the district of the superintendent registrar by whom such certificate as aforesaid shall have been issued."

Notice to superintendent registrar, and issue of certificate by him, to be used and stand instead of banns.

By 3 & 4 Vict. c. 92, intituled "An Act for enabling Courts of Justice to admit Non-parochial Registers as Evidence of Births or Baptisms, Deaths or Burials, and Marriages," [10th August, 1840,] after reciting, "Whereas by a commission under the great seal, bearing date the thirteenth day of September in the seventh year of the reign of his late majesty, certain persons therein named were appointed commissioners for inquiring into the state, custody, and authenticity of any registers or records of births or baptisms, deaths or burials, and marriages lawfully solemnized, as had been kept in England and Wales, other than the parochial registers, and the copies thereof deposited with the diocesan registers, and for inquiring whether any and what measures could be beneficially adopted for collecting and arranging and depositing such registers or records, and for considering and advising the proper measures to be adopted for giving full force and effect as evidence in all courts of justice to all such registers as were found accurate and faithful, and for facilitating the production and reception of the same; and by another commission under the great seal, issued in the first year of her present majesty, the powers and duties of the said commissioners were continued: and whereas there are now about seven thousand registers in the custody of the said commissioners, which by their report to her majesty, bearing date the 18th day of June 1838, they have recommended to be kept together in some secure place of deposit, and to be deemed to be in legal custody, and to be receivable in evidence in all courts of justice, subject to certain conditions and restrictions therein recommended; be it therefore enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That the registrar general of births, deaths, and marriages in England shall receive, and deposit in the general register office, all the registers and records of births, baptisms, deaths, burials, and marriages now in the custody of the commissioners appointed by her majesty as aforesaid, and which they have by their said report recommended to be kept in some secure place of deposit, and also the several registers and records mentioned in the shedules (H.), (I.), (P.), and (Q.), annexed to the said report of the said commissioners, and also such other registers as are hereinafter directed to be deposited with him: Provided that none of the said registers or records not already in the custody of the said commissioners shall 3 & 4 Vict. c. 92.

Certain registers to be deposited in the custody of the registrar general.

Proviso as to registers not received.

3 & 4 Vict. c. 92.

be received by the registrar general, unless the person or persons now having the custody thereof shall, within three calendar months from the passing of this act, send the same to the said commissioners for examination by them."

Continuance of commissioners for twelve months.

Sect. 2. "That such of the said commissioners as are now living shall be continued commissioners for the purposes hereinafter mentioned for the space of twelve calendar months from the passing of this act, and they are hereby authorized, from time to time during the said twelve months, to inquire into the state, custody, and authenticity of every register or record of birth, baptism, naming, dedication, death, burial, and marriage which shall be sent to them within three calendar months from the passing of this act, and such as they shall find accurate and faithful they shall certify under the hands and seals of three or more of them (of whom the registrar general shall not be one) as fit to be placed with the other registers and records hereby directed to be deposited in the said office; and the registrar general, upon receiving the said certificate of the said commissioners, accompanied by an order of one of her majesty's principal secretaries of state, shall receive such registers and records, and deposit them with the registers and records which are now in the custody of the said commissioners."

Their duty.

Declaratory provisions as to the general register office.

Sect. 3. "That every office or place where any registers or records which by this or any other act are directed to be in the custody of the registrar general shall be deposited by direction of the registrar general, with the approval of the lord high treasurer, or three or more commissioners of her majesty's treasury, shall be deemed to be a branch or part of the general register office, so long as such registers or records shall remain therein, and the execution of this act shall be deemed to be a part of the business of the general register office."

Commissioners to identify the registers deposited.

Sect. 4. "That the said commissioners shall from time to time deliver to the registrar general a descriptive list or lists of all the registers and records now in their custody, and also of all the registers and records which shall be so certified as fit to be placed with the other registers and records in the general register office, containing such particulars, and referring to the registers and records in such manner, as in the opinion of the registrar general shall be sufficient to identify every such register and record; and three or more of the said commissioners, (of whom the registrar general shall not be one,) shall certify under their hands, upon some part of every separate book or volume containing any such register or record, that it is one of the registers or records deposited in the general register office pursuant to this act, and in every case in which the commissioners shall certify to the registrar general as aforesaid that certain parts only of such registers or records appear to them to be original or authentic, the commissioners shall refer in the descriptive list or lists, and also in the certificate upon such book or volume, to those parts, in such manner as to identify them to the satisfaction of the registrar general."

Lists to be made; which shall be open to search;

Sect. 5. "That the registrar general shall cause lists to be made of all the registers and records which may be placed in his custody by virtue of this act; and every person shall be entitled, on payment of the fees hereinafter mentioned, to search the said lists, and any register or record therein mentioned, between the hours of ten in the morning and four in the afternoon of every day, except Sundays and Christmas Day and Good Friday, but subject to such regulations as may be made from time to time by the registrar general, with the approbation of one of her majesty's principal secretaries of state, and to have a certified extract of any entry in the said registers or records, and for every search in any such register or record shall be paid the sum of 1*s*; and for every such certified extract the sum of 2*s*. 6*d*. and no more."

and certified extracts to be had therefrom.

Registers deemed in legal custody, and shall be receivable in evidence.

Sect. 6. "That all registers and records deposited in the general register office by virtue of this act, except the registers and records of baptisms and marriages at the Fleet and King's Bench prisons, at May Fair, at the

Mint in Southwark, and elsewhere, which were deposited in the registry of the bishop of London in the year 1821, as hereinafter mentioned, shall be deemed to be in legal custody, and shall be receivable in evidence in all courts of justice, subject to the provisions hereinafter contained; and the registrar general shall produce or cause to be produced any such register or record, on subpœna or order of any competent court or tribunal, and on payment of a reasonable sum, to be taxed as the court shall direct, and to be paid to the register general, on account of the loss of time of the officer by whom such register or record shall be produced, and to enable the registrar general to defray the travelling and other expences of such officer." 3 & 4 Vict. c. 92.

Sect. 7. "That every sum received under the provisions of this act by or on account of the registrar general shall be accounted for and paid by the registrar general, at such times as the commissioners of her majesty's treasury of the United Kingdom of Great Britain and Ireland from time to time shall direct, into the Bank of England, to the credit of her majesty's exchequer, according to the provisions of an act passed in the fourth year of his late majesty king William the Fourth, intituled 'An Act to regulate the Office of the Receipt of His Majesty's Exchequer at Westminster.'" Fees to be accounted for. 4 & 5 Will. IV. c. 15.

Sect. 8. "That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register or record of birth or baptism, naming or dedication, death or burial, or marriage, which shall be deposited with the registrar general by virtue of this act, or any part thereof, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or record, or shall willfully insert or cause to be inserted in any of such registers or records any false entry of any birth or baptism, naming or dedication, death or burial, or marriage, or shall wilfully give any false certificate, or shall certify any writing to be an extract from any register or record knowing the same register or record to be false in any part thereof, or shall forge or counterfeit the seal of the said office, shall be guilty of felony." (See "*Forgery*." Vol. III.) Wilful injury or forgery of registers, felony.

Sect. 9. "That the registrar general shall certify all extracts which may be granted by him from the registers or records deposited or to be deposited in the said office, and made receivable in evidence by virtue of the provisions herein contained, by causing them to be sealed or stamped with the seal of the office; and all extracts purporting to be stamped with the seal of the said office shall be received in evidence in all civil cases, instead of the production of the original registers or records containing such entries, subject nevertheless to the provisions hereinafter contained." Extracts from registers to be stamped with the seal of office.

Sect. 10. "That every extract granted by the registrar general from any of the said registers or records shall describe the register or record from which it is taken, and shall express that it is one of the registers or records deposited in the general register office under this act; and the production of any of the said registers or records from the general register office, in the custody of the proper officer thereof, or the production of any such certified extract containing such description as aforesaid, and purporting to be stamped with the seal of the said office, shall be sufficient to prove that such register or record is one of the registers and records deposited in the general register office under this act, in all cases in which the register or record, or any certified extract therefrom, is herein respectively declared admissible in evidence." Extracts to describe the register whence taken. Production of register shall be sufficient.

Sect. 11. "That in case any party shall intend to use in evidence on the trial of any cause in any of the courts of common law, or on the hearing of any matter which is not a criminal case at any session of the peace in England or Wales, any extract, certified as hereinbefore mentioned, from any such register or record, he shall give notice in writing to the opposite party, his attorney or agent, of his intention to use such certified extract in evidence at such trial or hearing, and at the same time shall deliver to him, his attorney or agent a copy of the extract, and of the certificate thereof; and on proof by affidavit of the Certified extracts may be used in courts of law and sessions, upon notice given.

3 & 4 Vict. c. 92.

service, or on admission of the receipt of such notice and copy, such certified extract shall be received in evidence at such trial or hearing, if the judge or court shall be of opinion that such service has been made in sufficient time before such trial or hearing to have enabled the opposite party to inspect the original register or record from which such certified extract had been taken, or within such time as shall be directed by any rule to be made as hereinafter provided."

If the original be used, notice must nevertheless be given.

Sect. 12. "That in case any party shall intend to use in evidence on such trial or hearing any original register or record (instead of such certified extract), he shall nevertheless, within a reasonable time, give to the opposite party notice of his intention to use such original register or record in evidence, and deliver to such opposite party a copy of a certified extract of the entry or entries which he shall intend to use in evidence."

Certified extracts may be used in evidence on examination of witnesses, or at the hearing of the cause in courts of equity, upon notice.

Sect. 13. "That in case any party shall intend to use in evidence on any examination of witnesses, or at the hearing of any cause in any court of equity, any extract, certified as hereinbefore mentioned, he shall, ten clear days at the least before publication shall pass in any cause where no commission has issued for the examination of the witnesses of the party intending to give such evidence, or where such commission shall issue then seven clear days at the least before the opening of such commission, deliver to the clerk or clerks in court of the opposite party or parties a notice in writing of his intention to use such certified extract in evidence on the examination of witnesses or at the hearing of the cause (as the case may be), and shall at the same time deliver to the clerk or clerks in court of the opposite party or parties a copy or copies of such extract, and of the certificate thereof, and thereupon such certificated extract shall be received in evidence; provided that at the hearing of the cause the service of such certified copy and notice be admitted or proved by affidavit."

If the original be used, notice must nevertheless be given.

Sect. 14. "That in case any party shall intend to use in evidence, on such examination or hearing in any court of equity, any original register or record (instead of such certificated extract), he shall nevertheless, within the number of days hereinbefore respectively mentioned, deliver to the clerk or clerks in court of the opposite party or parties a notice of his intention to use such original register or record in evidence, together with a copy of a certified extract of the entry or entries which he shall intend to use in evidence."

Certified extract to be used in interlocutory proceedings, and in the master's office.

Sect. 15. "That in case any party shall intend to use in evidence, upon any petition, motion, or other interlocutory proceedings in any court of equity or in the master's office, any extract, certified as hereinbefore mentioned, he shall produce to the court or master (as the case may be) an extract, certified as hereinbefore mentioned, accompanied by an affidavit stating the deponent's belief that the entry or entries in the original register or record is correct and genuine."

Certified extract to be used in ecclesiastical courts;

Sect. 16. "That in case any party shall intend to use in evidence in any ecclesiastical court, or in the high court of admiralty, any extract, certified as hereinbefore mentioned, he shall plead and prove the same in the same manner to all intents and purposes as if the same were an extract from a parish register, save and except that any such extract, certified as hereinbefore mentioned, shall be pleaded and received in proof without its being necessary to prove the collation of such extract with the original register or record: Provided always, that the judge of the court, on cause shown by any party to the suit (or of his own motion when the proceedings are *in pœnam*), may, after publication, issue a monition for the production at the hearing of the cause of the original register or record containing the entry to which such certified extract relates."

and the judge may order the production of the original.

In criminal cases the originals to be produced.

Sect. 17. "That in all criminal cases in which it shall be necessary to use in evidence any entry or entries contained in any of the said registers or records, such evidence shall be given by producing to the court the original register or record."

Rules to be made to regulate the

Sect. 18. "That at any time within three years from the passing of this act such rules may be made, by the authority hereinafter specified, for

regulating the mode of reception of the said registers or records, or certified extracts therefrom, in evidence in the courts hereinafter mentioned, and for regulating the notice hereinbefore directed to be given, and the costs of producing such registers or records or extracts, as shall seem expedient, which rules, orders, and regulations shall be laid before both houses of parliament, and shall take effect within six weeks after the same shall have been so laid before parliament, and shall thereupon be binding and obligatory upon the said courts respectively, and be of the like force and effect as if the provisions contained therein had been herein expressly enacted."

3 & 4 Vict. c. 92.

practice as to admission of registers.

Sect. 19. "That such rules shall be made for the high court of Chancery by the lord high chancellor and the master of the rolls, and for the courts of Queen's Bench, Common Pleas, and Exchequer, by eight or more judges of the last-mentioned courts, of whom the chiefs of each of the last-mentioned courts shall be three, and for the high court of Admiralty by the judge of the court of Admiralty, and for the ecclesiastical courts in England and Wales by the official principal of the court of Arches, with the chancellor of the diocese of London, or with the commissary of the diocese of Canterbury."

Who shall make such rules.

Sect. 20. "That the several registers and records of baptisms and marriages performed at the Fleet and King's Bench prisons, at May Fair, and at the Mint in Southwark, and elsewhere, which were deposited in the registry of the bishop of London in the year 1821, by the authority of one of his late majesty's principal secretaries of state, shall be transferred from the said registry to the custody of the registrar general, who is hereby directed to receive the same for safe custody: Provided nevertheless, that none of the provisions hereinbefore contained respecting the registers and records made receivable in evidence by virtue of this act shall extend to the registers and records so deposited in the registry of the bishop of London in the year 1821 as aforesaid."

Fleet and May Fair registers, &c.

By the 1 Vict. c. 22, s. 18, registrars appointed under the registration acts are exempt from serving as jurors, and from all parochial and corporate offices.

Registrars exempt from being jurors, and serving offices.

SCHEDULE (A.)

1836.—BIRTHS in the *District* of *Marylebone, North*, in the County of *Middlesex*.

No.	When Born.	Name, if any.	Sex.	Name and Surname of Father.	Name and Maiden Surname of Mother.	Rank or Profession of Father.	Signature, Description, and Residence of Informant.	When Registered.	Signature of Registrar.	Baptismal Name, if added after Registration of Birth.
1	*7th January.*	*James.*	*Boy.*	*William Green.*	*Rebecca Green, formerly Jennings.*	*Carpenter.*	*William Green, Father, Carpenter, 17, North Street, Marylebone.*	*9th January.*	*John Cox, Registrar.*	

The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.

SCHEDULE (B.)

1836.—DEATHS in the *District* of *Marylebone, North*, in the County of *Middlesex*.

No.	When Died.	Name and Surname.	Sex.	Age.	Rank or Profession.	Cause of Death.	Signature, Description, and Residence of Informant.	When Registered.	Signature of Registrar.
17	*4th February.*	*William Green.*	*Male.*	43	*Carpenter.*		*Rebecca Green, Widow, 17, North Street, Marylebone.*	*5th February*	*John Cox, Registrar.*

The Words and Figures in *Italics* in this Schedule to be filled in according as the case may be.

SCHEDULE (C.)

1836.—MARRIAGES solemnized *at the Parish Church* in the *Parish* of *Marylebone*, in the County of *Middlesex*.

No.	When Married.	Name and Surname.	Age.	Condition.	Rank or Profession.	Residence at the Time of Marriage.	Father's Name and Surname.	Rank or Profession of Father.
1	17 *March*, 1836.	*William Hastings.*	*Of full Age.*	*Bachelor.*	*Carpenter.*	*3, South Street.*	*Peter Hastings.*	*Upholsterer.*
		Sophia Ann Mitchell.	*Minor.*	*Spinster.*	—	*17, High Street.*	*Geoffry Mitchell.*	*Butcher.*

Married in the *Parish Church*, according to the Rites and Ceremonies of the *Established Church*, *by Licence*, or *after Banns*, by me, *James Hollingshead*, *Vicar.*

This Marriage was solemnized between us, { *William Hastings*, *Sophia Ann Mitchell*, } in the Presence of us, { *John Hastings* *Geoffry Mitchell.*

The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.

SCHEDULE (D.)

"I, *John Cox*, registrar of births and deaths in the *district* of *Marylebone*, *North*, in the county of *Middlesex*, do hereby certify, that this is a true copy of the registrar's book of births [*or*, deaths] within the said *district*, from the entry of the birth [*or*, death] of *James Green*, No. 1, to the entry of the birth [*or*, death] of *William Strange*, No. 34. Witness my hand this *seventh* day of *March*, 1838.

"*John Cox*, Registrar."

The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.

6 & 7 Will. IV. c. 86.

SCHEDULE (E.)

"I, *John Cox*, registrar of births and deaths in the *district* of *Marylebone, North*, in the county of *Middlesex*, do hereby certify, that the death of *Henry Hastings* was duly registered by me on the *seventh* day of *March*, 1836. Witness my hand this *eighth* day of *March*, 1836.

"*John Cox*, Registrar."

SCHEDULE (F.)

"I, *James Smith*, coroner for the county of *Dorset*, do hereby order the burial of the body now shown to the inquest jury as the body of *John Jones*. Witness my hand this *eighth* day of *March*, 1836.

"*James Smith*. Coroner."

SCHEDULE (G.)

"I, *Gilbert Elliot*, vicar of *Barming*, in the county of *Kent*, do hereby certify, that I have this day baptized, by the name of *Thomas*, a *male* child, produced to me by *William Green*, as the *son* of *William Green* and *Rebecca Green*, and declared by the said *William Green* to have been born at *Marylebone*, in the county of *Middlesex*, on the *seventh* day of *January*, 1836. Witness my hand this *first* day of *December*, 1838.

"*Gilbert Elliot*, Vicar."

The Words and Figures in *Italics* in the above Schedules to be filled in as the case may be.

Regrating. *See* "*Forestalling*," Vol. III.

Rejoinder.

Form of.

CRIMINAL pleadings rarely proceed beyond a replication. The following is a form of rejoinder:—

"*And the said C. D. as to the said replication of the said A. G. to the said plea of him the said C. D., saith that our lady the Queen, by reason of any thing by the said C. D. in that replication alleged, ought not further to prosecute the said indictment against him the said C. D.; because he saith that*," [&c., so proceeding to state the matter of the rejoinder; and concluding thus:] "*And of this the said C. D. puts himself upon the country, &c.*"

Relations, *when incompetent Witnesses. See* "*Evidence*," Vol II. p. 425.

Religion. *See* "*Church*," Vol. I.; "*Common Prayer*," Vol. I.; "*Rewlness*," Vol. III.; *ante*, "*Popery*;" "*Dissenters*," Vol. II.;—As to when Witness incompetent from, *see* "*Evidence*," Vol II. p. 428.

Remanding for Examination. *See "Examination,"* Vol. II. p. 470; *"Commitment,"* Vol. I.

Rent, *Distress for. See "Distress,"* Vol. II., *see also, "Landlord and Tenant,"* Vol. III.

Replevin, *when it lies to try the Right of Distress for a Penalty, see* Vol. II. p. 330;—*To try the Legality of Distress for Rent, see* Vol. I. p. 297;—*To try the Legality of Distress for Poor Rate, see "Poor,"* Vol. IV.

Replication.

A REPLICATION signifies the answer in pleading to the defendant's plea. Except sometimes to special pleas to indictments for not repairing highways, or for libels, a special replication seldom occurs in criminal proceedings; and the common *similiter* to the general issue is the only replication usually adopted. What.

The following are the forms of the commencement and conclusion of replications:—

To an indictment.

"*And hereupon A. C.*" [the clerk of the peace, or clerk of the arraigns], "*who prosecutes for our said lady the Queen in this behalf, says, that by reason of anything in the said plea of the said C. D. above pleaded in bar alleged, our said lady the Queen ought not to be precluded from prosecuting the said indictment against the said C. D.; because he says that,*" [&c. state the matter of the replication; and conclude thus:] "*And this he the said A. C. prays may be inquired of by the country.*" [Or, if it conclude with a verification, then thus: "*And this he the said A. C. is ready to verify; wherefore he prays judgment, and that the said C. D. may be convicted of the premises in the said indictment above specified.*"]

To a plea to an indictment in Queen's Bench.

"*And hereupon E. H. L., esq., coroner and attorney of our said lady the Queen, in the court of our said lady the Queen, before the Queen herself, who prosecutes for our said lady the Queen in this behalf, says, that by reason of,*" [&c.; and the conclusion thus:] "*And this the said coroner and attorney of our said lady the Queen prays,*" [&c.; as above]. [Where the plea is pleaded to an information, the replication is thus: "*And the said attorney-general* [or *coroner and attorney*] *of our said lady the Queen, who prosecutes as aforesaid, says, that by reason of,*" &c. &c. "*And this the said attorney-general* [or *coroner and attorney*] *of our said lady the Queen prays,*" &c., as above.]

Rescue.

As to escapes, *see "Escape,"* Vol. II.; as to prison-breaking, *see ante, "Prison Breaking."* The offence of rescue is much of the same nature as these.

Offence of rescue.

Rescous is an ancient French word, coming from *rescourer*, that is,

Offence of.

recuperare, to recover; and signifies a forcible setting at liberty, against law, a person arrested by the process or course of law. (1 *Inst.* 160.)

Rescue is a common-law felony, if the party rescued be a felon. (*R.* v. *Haswell, R. & R.* 458.) It is a misdemeanor, if the party rescued be guilty of a misdemeanor. (1 *Hale*, 607. See a case of *R.* v. *Stokes*, 5 *C. & P.* 148; 1 *Russ. C. & M., by Greaves*, 435.) If the party rescued be guilty of high treason, the rescuer would be guilty of treason. (2 *Hawk. c.* 21, *s.* 7.)

It seems that it is necesary that the rescuer should have knowledge that the person is under arrest for a criminal offence, if he be in the custody of a private person: but if he be in the custody of an officer, there at his peril he is to take notice of it. (2 *Hale*, 606.)

But it is said, that to rescue a felon taken on a general warrant, to answer what shall be objected against him, no cause being expressed in the warrant, is not felony. (1 *Hale*, 578.)

Nor unless a felony hath been really done. (*Hale's Sum.* 116.)

It is said that the rescue of a prisoner in any of the superior courts committed by the justices, is a great misprision for which the party and the prisoner, if assenting, will be liable to be punished even by imprisonment for life, and forfeiture of goods and chattels; though no stroke or blow were given. (1 *East, P. C. c.* 8, *s.* 3; *Bac. Ab. Rescue*, (E).)

Hindrance of arrest.

A hindrance of a person to be arrested, that has committed felony, is a misdemeanor, but no felony. (*Hale's Sum.* 116; 2 *Haw. c.* 21, *s.* 7; *R. & R.* 458. *See* "*Assault*," Vol. I.)

When it shall be tried.

Although a prison-breaker may be arraigned for that offence, before he be arraigned for the crime for which he was imprisoned, yet he who rescues one imprisoned for felony, cannot, according to the better opinion, be arraigned for such offence, as for a felony, till the principal offender be attainted; but he may be immediately proceeded against for a misprision, if the queen pleases. (2 *Haw. c.* 21, *s.* 7.)

Therefore, if the principal die before the attainder, he shall be fined and imprisoned. (*Hale's Sum.* 116.)

Also, if the principal be found not guilty, or guilty of a crime not capital, the rescuer ought to be discharged of felony: but he may be fined for the misdemeanor. (1 *Hale*, 598, 599. *See* "*Accessary*," Vol. I.)

Indictment for.

An indictment of *rescous* must set forth the nature and cause of the imprisonment, and the special circumstances of the fact in question. (2 *Haw. c.* 21, *s.* 5.) The word *recussit*, or something equivalent to it, to show that the rescue was forcible, and against the will of the officer. (*R.* v. *Burridge*, 3 *P. Wms.* 483.) It seems, that on a rescue of goods taken under a *fi. fa.*, the *fi. fa.* must be set forth. (*See R.* v. *Westbury*, 8 *Mod.* 357.)

Punishment for.

If the party rescued was in custody for treason, the party rescuing would be punishable as a traitor.

If the party rescued was in custody for a felony, then the punishment is pointed out by the 1 & 2 Geo. IV. c. 88, "An Act for the Amendment of the Law of Rescue," by sect. 1 of which, after reciting that "divers daring attempts have of late been made to effect the rescue or prevent the detention of persons charged with, or committed for or on suspicion of felony: And whereas it might tend more effectually to prevent the commission of such offences if further provisions were made for the punishment of persons who may hereafter be convicted thereof, as are hereinafter enacted;" it is enacted, that "If any person shall rescue, or aid and assist in rescuing, from the lawful custody of any constable, officer, headborough, or other person whomsoever, any person charged with, or suspected of, or committed for any felony, or on suspicion thereof, then if the person or persons so offending shall be convicted of felony, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, it shall be lawful for the court by or before whom any such person or persons shall be convicted, to order and direct, in case it shall think fit, that such person or persons, instead of being so

1 & 2 Geo. IV. c. 88.

fined and imprisoned as aforesaid,* shall be transported beyond the seas for seven years, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not less than one, and not exceeding three, years." (*See* 7 & 8 Geo. IV. c. 88, s. 10.)

1 & 2 Geo. IV. c. 88.

* *Sic.*

If the party rescued was in custody for a misdemeanor, he would be punishable accordingly, by fine or imprisonment, or both. (2 *Hawk. c.* 21, *s.* 8; 2 *Russ. C. & M. 3rd ed.* 435.)

Rescuing Murderers.]—By the 25 Geo. II. c. 37, s. 9, "if any person or persons whatsoever shall by force set at liberty or rescue, or attempt to rescue or set at liberty, any person out of prison, who shall be committed for, or found guilty of murder, or rescue, or attempt to rescue, any person convicted of murder, going to execution, or during execution, every person so offending shall be deemed, taken, and adjudged to be guilty of felony, and shall suffer death without benefit of clergy."

Rescuing murderers.

But the punishment of death is abolished by 7 Will. IV. & 1 Vict. c. 91, s. 1, which, after reciting the above enactment, enacts, "That if any person shall, after the commencement of this act, (1st October, 1837,) be convicted of the offence thereinbefore mentioned, such person shall not suffer death, or have sentence of death awarded against him or her for the same, but shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years." Sect. 2 relates to the place and mode of imprisonment.

As to rescuing the body after execution, *see* 25 Geo. II. c. 37, s. 10, "*Homicide,*" Vol. III.

Rescuing body after execution.

Rescuing Convicts, &c.]—As to rescuing convicts, *see* 5 Geo. IV. c. 84, s. 22, "*Transportation,*" Vol. VI.

Rescuing convicts.

The 9 Geo. IV. c. 31, s. 25, contains an enactment against the assaulting of peace officers and others in the execution of their duty in apprehending, &c. of offenders. (*See* "*Assaults,*" Vol. I.)

Assaults on constables, or to prevent arrest of offenders.

There are also special penalties enacted for rescuing offenders against particular statutes, which belong not to this general title.

Rescue of a Distress and Pound-breach.]—This offence has been already considered under *title*, "*Distress,*" *for Rent*, Vol. II. p. 312. The following important statute on the subject has been passed since the printing of that portion of the work.

Rescue of a distress and pound-breach.

By 6 & 7 Vict. c. 30, intituled "An Act to amend the Law relating to Pound-breach and Rescue in certain Cases," [12th July, 1843,] reciting that "it frequently happens that cattle which are lawfully impounded, or which are lawfully seized for the purpose of being impounded, are rescued from the pound or place in which they are so impounded, or on the way to or from such pound or place, and the expence of prosecuting such offenders, or obtaining redress for the injury occasioned by such rescue to the persons so entitled to distrain, is usually out of proportion to the damage for which such cattle are distrained: and that it is expedient, for remedy thereof, to enable two or more of her majesty's justices of the peace to try such offenders in a summary way, and award such redress as hereinafter mentioned to the persons on whose behalf the cattle so rescued shall have been distrained;" it is enacted, "That in case any person or persons shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle, which shall be lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, or lying or being depastured on any inclosed land without the consent of the owner or occupier of such inclosed land, from the pound or place where the same shall be so impounded, or on the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, every person

6 & 7 Vict. c. 30.

Persons releasing or attempting to release cattle impounded, or damaging any pound, &c., upon conviction before two justices, to forfeit 5*l.* and expences, and in default of payment to be imprisoned.

6 & 7 Vict. c. 30

so offending shall, upon conviction thereof before any two of her majesty's justices of the peace, forfeit and pay any sum not exceeding five pounds, together with reasonable charges and expences, or in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months nor less than fourteen days, unless such sum of money and costs as aforesaid shall be sooner paid; and it shall be lawful for the said justices to award the whole or any portion of such penalty to the person or persons on whose behalf such cattle were distrained."

Justices not to hear cases where questions of title arise, or as to any bankruptcy, &c.

Sect. 2. "That nothing herein contained shall authorize any justices of the peace to hear and determine any case of pound-breach or rescue in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice, or as to the obligation of maintaining, repairing, or keeping in repair any wall, hedge, paling, ditch, sunk fence, or fence whatsoever."

Summonses may be issued against offenders, who, on proof on oath of one or more witnesses before two justices, shall be convicted in penalty and costs.

Sect. 3. "That it shall and may be lawful to and for any justice of the peace, upon information or complaint being made upon oath before him by any person of any offence against the provisions of this act, to summon the party accused to appear before any two justices of the peace within whose jurisdiction the offence shall have been committed, at a time and place to be named in such summons, and upon the appearance of such party, or in his absence in case he shall not appear according to the tenor of such summons, any such justices before whom such party shall have been so summoned to appear shall and may (upon proof of the service of such summons) proceed to examine into the matter, and upon due proof made of such having been committed, either by confession of the party accused or upon the oath of one or more credible witness or witnesses, to give judgment or convict for the penalty and costs (as the case may be)."

Offenders may be apprehended by warrant of a justice.

Sect. 4. "That every such justice of the peace may, without issuing any summons, forthwith issue his warrant to any constable for the apprehension of any person charged under this act, whenever good grounds for so doing to his satisfaction shall be stated on oath before him."

Cattle trespassing on highways.

As to the rescue of cattle trespassing on highways, *see* 5 & 6 Will. IV. c. 50, s. 75; *title*, "*Highway*," Vol. III.

Commitment for rescue.

Commencement as usual, *ante*, 11.] *on the day of , A. D. , at the parish of in the said county, whilst C. D., a constable, was conveying one E. F. to the common gaol at , under and by virtue of a warrant of commitment of one of her majesty's justices of the peace, for having [feloniously stolen the goods of J. N.], did unlawfully assault and beat the said C. D., and did then and there [feloniously,] unlawfully, and forcibly, and against the will of the said C. D., rescue the said E. F. out of the custody of the said C. D. And you the said keeper, &c.* [Conclude as usual, as *ante*, 11.]

The word "feloniously" should be omitted in all cases (excepting murder, see the 25 Geo. II. c. 37, s. 9, *ante*, p. 729), where the party is not convicted of the offence; and also in cases where he has been convicted, if the offence be under felony.

Indictment for.

——— (to wit). The jurors for our lady the Queen upon their oath present, that on the day of , in the year of the reign of our lady the now Queen Victoria, J. P., esq., one of the justices of our said lady the Queen, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, did make, direct, and deliver a warrant [or precept] in writing, to A. C., of , in the said county, [yeoman,] constable of the town of aforesaid, in the county aforesaid, by which said warrant he,

the said A. C., the constable aforesaid, was commanded to take the body of A. O., late of , [yeoman,] and bring and have him, the said A. O., before the said J. P., to be examined by him the said J. P., concerning [an assault said to have been committed by him, the said A. O., upon A. I., of , yeoman]; which said A. C., the constable aforesaid, afterwards, that is to say, on the day of , in the year aforesaid, at aforesaid, in the county aforesaid, by virtue of the said warrant, did take and arrest him, the said A. O., for the cause aforesaid, and him the said A. O., in his custody, by virtue of the said warrant, then and there had; and that the said A. O., late of aforesaid, in the county aforesaid, [yeoman,] and B. O., late of the same, [yeoman,] well knowing the said A. O. so to be arrested as aforesaid, afterwards, to wit, on the said day of , in the year aforesaid, at aforesaid, in the county aforesaid, with force and arms, in and upon the said A. C., the constable aforesaid, then and there being, in the peace of God and of our lady the Queen, and in the execution of his said office then and there being, did make an assault, and him, the said A. C., then and there did beat, wound, and ill-treat; and that the said B. O., him, the said A. O., out of the custody of the said A. C., and against the will of the said A. C., then and there, with force and arms, unlawfully did rescue, and put at large to go where he would; and that the said A. O. himself, out of the custody of the said A. C., and against the will of the said A. C., then and there, with force and arms, unlawfully did rescue, and escape at large, to go where he would: in contempt of our said lady the Queen and her laws, to the great damage of the said A. C., to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts, as the case may suggest.]

Indictment for a rescue.

Restitution of Stolen Goods, *or Goods obtained under False Pretences. See "Larceny,"* Vol. III.

Returning from Transportation. *See "Transportation,"* Vol. VI.

Rewards.

As to the expences of prosecuting, *see "Costs,"* Vol. I.

As to the offence of taking rewards to help to stolen goods, *see "Larceny,"* Vol. III.

The 7 Geo. IV. c. 64, s. 28, enacts, "That where any person shall appear to any court of oyer and terminer, gaol delivery, superior criminal court of a county palatine or court of great sessions, to have been active in or towards the apprehension of any person charged with murder, or with feloniously and maliciously shooting at, or attempting to discharge any kind of loaded fire-arms at any other person, or with stabbing, cutting, or poisoning, or with administering anything to procure the miscarriage of any woman, or with rape, or with burglary or felonious housebreaking, or with robbery on the person, or with arson, or with horse-stealing, bullock-stealing, or sheep-stealing, or with being accessary before the fact to any of the offences aforesaid, or with receiving any stolen property

Court may order rewards to those who have been active in apprehending.

In certain cases

7 Geo. IV. c. 64.

knowing the same to have been stolen, every such court is hereby authorized and empowered, in any of the cases aforesaid, to order the sheriff of the county in which the offence shall have been committed to pay to the person or persons, who shall appear to the court to have been active in or towards the apprehension of any person charged with any of the said offences, such sum or sums of money as to the court shall seem reasonable and sufficient to compensate such person or persons for his, her, or their expences, exertions, and loss of time, in or towards such apprehension; and where any person shall appear to any court of sessions of the peace to have been active in or towards the apprehension of any party charged with receiving stolen property, knowing the same to have been stolen, such court shall have the power to order compensation to such person in the same manner as the other courts hereinbefore mentioned. Provided always, that nothing herein contained shall prevent any of the said courts from also allowing to any such persons, if prosecutors or witnesses, such costs, expences, and compensation, as courts are by this act empowered to allow to prosecutors and witnesses respectively."

Proviso as to expences.

The rewards given by this enactment are not confined to cases where the person apprehending has had a loss of time, or has been at any expence. (*R.* v. *Barnes*, 7 *C. & P.* 166.)

On the application for the reward, if the facts on which it is founded are not in evidence, the judge requires an affidavit of them. (*R.* v. *Jones*, 7 *C. & P.* 167.)

Officer to be paid 5*s.* for the order, and the reward to be paid by the sheriff, who is to be repaid by the treasurer.

Sect. 29. "Every order for payment to any person in respect of such apprehension as aforesaid, shall be forthwith made out and delivered by the proper officer of the court unto such person, upon being paid for the same the sum of 5*s.* and no more; and the sheriff of the county for the time being is hereby authorized and required, upon sight of such order, forthwith to pay to such person, or to any one duly authorized on his or her behalf, the money in such order mentioned; and every such sheriff may immediately apply for repayment of the same to the commissioners of his majesty's treasury, who, upon inspecting such order, together with the acquittance of the person entitled to receive the money thereon, shall forthwith order repayment to the sheriff of the money so by him paid, without any fee or reward whatsoever."

Allowance may be made to widow, child, or parent, of a person killed in endeavouring to apprehend certain offenders; to be paid by the sheriff.

Sect. 30. "If any man shall happen to be killed in endeavouring to apprehend any person who shall be charged with any of the offences hereinbefore last mentioned, it shall be lawful for the court before whom such person shall be tried to order the sheriff of the county to pay to the widow of the man so killed, in case he shall have been married, or to his child or children, in case his wife shall be dead, or to his father or mother, in case he shall have left neither wife nor child, such sum of money as to the court in its discretion shall seem meet; and the order for payment of such money shall be made out and delivered by the proper officer of the court unto the party entitled to receive the same, or unto some one on his or her behalf, to be named in such order by the direction of the court, and every such order shall be paid by and repaid to the sheriff in the manner hereinbefore mentioned."

Police.

As to rewards to police officers, *see ante*, "*Police*."

Riot—Unlawful Assembly—Training to Arms.

See titles, "*Affray,*" "*Assault,*" Vol. I.

I. *Riot, Rout, or Unlawful Assembly, Punishment for, &c.*, p. 733.

II. *Rioters Demolishing Buildings, &c.*, p. 737.

III. *How Riots may be restrained by a Private Person*, p. 738.

IV. *How by a Constable or other Peace Officer*, p. 739.

V. *How by one Justice; and herein of the Riot Act*, p. 739.

VI. *How by two Justices*, p. 743.

VII. *How by Process out of Chancery*, p. 746.

VIII. *Seditious Meetings, &c.*, p. 746.

IX. *Training to Arms*, p. 758.

X. *Forms*, p. 759.

I. Riot, Rout, or Unlawful Assembly, Punishment for, &c.

What constitutes the Offence.]—When three persons or more shall assemble themselves together, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, with force or violence, against the peace, or to the manifest terror of the people, whether the act intended were of itself lawful or unlawful; and if they only meet to such a purpose or intent, although they shall after depart of their own accord, without doing any thing, this is an *unlawful assembly*. What an unlawful assembly.

If after their first meeting they shall move forward towards the execution of any such act, whether they put their intended purpose in execution or not, this, according to the general opinion, is a *rout*. What a rout

And if they execute such a thing indeed, then it is a *riot*. (1 *How. c.* 65, *s.* 1; *Dalt. c.* 136, *p.* 310, 311; 1 *Russ. C. & M.* 266, *3rd ed.; per Patteson, J., in R.* v. *Birt*, 5 *C. & P.* 154.) What a riot.

Three Persons or more.]—And, therefore, if the jury do acquit all but two, and find them guilty, the verdict is void, unless they be indicted *together with other rioters unknown*, because it finds them guilty of an offence whereof it is impossible that they should be guilty; for there can be no riot where there are no more persons than two. (2 *Haw. c.* 47, *s.* 8.) How many to constitute.

(*R.* v. *Scott and Hans*, 3 *Burr.* 1262.) Six persons were indicted; whereof two died before trial, two were acquitted, and two convicted. It was moved in arrest of judgment, for that two only could not be found guilty of a riot, unless they were indicted *together with other persons unknown*; which was not the case here; for it doth not appear that any others were guilty besides these two; here is no finding as to the two

1. *What is a Riot, Rout, &c.*

dead persons.— By Lord *Mansfield*. Six were indicted. Two of them are acquitted. Two are dead untried. The jury have found the other two guilty of a riot, consequently, it must have been with one or both of those who have not been tried; as it could not otherwise have been a riot.

Note.—In 1 *Haw.* pp. 156, 157, 158, (folio edition,) the words *more than three persons* are three times over inserted instead of *three persons or more;* which is only remarked as an instance, that, in a variety of matter, it is impossible for the mind of man to be always equally attentive.

Who may be guilty of.

Women are punishable as rioters; but not so infants, under the age of discretion, who are not persons within the aforesaid description. (1 *Haw. c.* 65, *s.* 14.)

Persons taking part in.

If any person encourages, or promotes, or takes part in riots, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, he is himself to be considered a rioter; for in this case all are principals. (*Per Mansfield, C. J., in Clifford* v. *Brandon*, 2 *Campb.* 370; *R.* v. *Boyce*, 4 *Burr.* 2073; *and see per Tindal, C. J., in* 5 *C. & P.* 265; *in R.* v. *Billingham*, 2 *C. & P.* 234; *R.* v. *Perkins*, 4 *id.* 537; *and the cases of R.* v. *Harris*, 1 *Car. & M.* 661; *and R.* v. *Simpson, id.* 669, *post.*)

But if three or more, lawfully assembled, quarrel, and the party fall on one of their own company, this is no riot; but if it be on a stranger, the moment the quarrel begins they begin to be an unlawful assembly, and their concurrence is evidence of an evil intention in them that concur, so that it is riot in them that act, and no more. (19 *Vin. Ab. Riot, A.* 15; *R.* v. *Ellis*, 2 *Salk.* 595.)

Inciters.

Inciting others to assemble to commit a riot is indictable. (1 *Russ.* 3*rd ed.* 269.)

Conspiracy.

The conspiring of several persons to meet together for the purpose of disturbing the peace and tranquillity of the realm, of exciting discontent and disaffection, and of exciting the queen's subjects to hatred of the government and constitution, may be prosecuted for a conspiracy. (*Rex* v. *Hunt and others*, 3 *B. & Ald.* 566.)

Evidence.

Declarations made by the parties assembling may be made evidence for the purpose of showing the object of the assemblage. And in general, evidence is admissible to show that the meeting caused alarm and apprehension. (*Redford* v. *Birley*, 3 *Stark.* 76.)

Parol evidence of inscriptions and devices on banners and flags displayed at a meeting is admissible without producing the originals. (*R.* v. *Hunt*, 3 *B. & Ald.* 566; and see several other points of evidence decided in that case.)

The prisoners must first be identified as forming part of the crowd, before the riot is proved. (1 *Russ.* 3*rd ed.* 289.)

The nature of the assembly.

Assemble themselves together.]—It seems agreed, that if a number of persons, being met together at a fair, or market, or church aisle, or on any other lawful and innocent occasion, happen, on a sudden quarrel, to fall together by the ears, they are not guilty of a riot, but of a sudden affray only, of which none are guilty but those who actually engage in it; because the design of their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it. Yet it is said, that if persons, innocently assembled together, do afterwards, upon a dispute happening to arise among them, form themselves into parties, with promises of mutual assistance, and then make an affray, they are guilty of a riot; because, upon their confederating together with an intention to break the peace, they may as properly be said to be assembled together for that purpose from the time of such confederacy, as if their first coming together had been on such a design. (1 *Haw. c.* 65, *s.* 3.)

An assembly of a man's friends for the defence of his person against those who threaten to beat him, if he go to such a market, &c., is unlawful; for he who is in fear of such insults must provide for his safety by demanding the surety of the peace against the persons by whom he is

threatened, and not make use of such violent methods, which cannot but be attended with the danger of raising tumults and disorders, to the disturbance of the public peace. But an assembly of a man's friends at his own house, for the defence of the possession of it against such as threaten to make an unlawful entry, or for the defence of his person against such as threaten to beat him in his house, is indulged by law; for a man's house is looked upon as his castle. He is not, however, to arm himself and assemble his friends in defence of his close. (*Per Heath, J., R.* v. *The Bishop of Bangor, Shrewsbury Sum. Ass.* 1796. *See* 1 *Russ.* 273, 274, and see the authorities there cited.)

1. *What is a Riot, Rout, &c.*

Any meeting assembled under such circumstances as, according to the opinion of rational and firm men, are likely to produce danger to the tranquillity and peace of the neighbourhood, is an *unlawful assembly;* and, in viewing this question, the jury should take into their consideration the hour at which the parties meet, and the language used by the persons assembled, and by those who addressed them, and then consider whether firm and rational men, having their families and property there, would have reasonable ground to fear a breach of the peace; as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage. (*R.* v. *Vincent,* 9 *Car. & P.* 91; *R.* v. *Neale,* 9 *C. & P.* 431.)

Where sixteen persons with faces blackened met at a house at night, intending to go out for night poaching, it was considered by *Holroyd,* J., an unlawful assembly. (*R.* v. *Brodrip,* 6 *C. & P.* 571.)

How far the objects of it must be of a private nature.

In the Execution of some Enterprise of a private Nature.]—It also seems agreed that the injury or grievance complained of and intended to be revenged or remedied by such an assembly must relate to some private quarrel only; as the inclosing of lands, in which the inhabitants of a town claim a right of common, or gaining the possession of tenements, the title whereof is in dispute, or such like matters relating to the interest or disputes of particular persons, and no way concerning the public; for wherever the intention of such an assembly is to redress public grievances, as to pull down inclosures in general, or reform religion, and the like, it is high treason. (1 *Haw. c.* 65, *s* 6.)

Of course, where the law authorizes force, the assembling to use it will not be unlawful, as in the case of a sheriff assembling persons to suppress a riot or the like. (*See* 1 *Haw. c.* 65, *s.* 2.)

There must be terror to create a riot.

Against the Peace, or to the Terror of the People.]—It seems to be clearly agreed that in every *riot* there must be some such circumstances, either of actual force or violence, or at least of an apparent tendency thereto, as are naturally apt to strike a terror into the people, as the show of armour, threatening speeches, or turbulent gestures; for every such offence must be laid to be done *in terrorem populi.* And from hence it clearly follows that assemblies at wakes, or other festival times, or meetings for exercise of common sports or diversions, as bull-baiting, wrestling, and such like, are not riotous (*a*). (1 *Haw. c.* 65, *s.* 5; *R.* v. *Hughes,* 4 *C. & P.* 372; *and see Ex parte Hill,* 1 *M. & Ry. Mag. C.* 106, *note.*) But assembling to witness a prize fight is unlawful, and every one present countenancing the fight is guilty of an offence. (*R.* v. *Billingham and others,* 4 *D. & R. M. C.* 127; 2 *C. & P.* 234; *R.* v. *Perkins,* 4 *C. & P.* 537; *ante,* "*Fighting,*" Vol. III.)

But it is not necessary, in order to constitute the crime of riot, that personal violence should have been committed. (*Per Mansfield, C. J., in Clifford* v. *Brandon,* 2 *Campb.* 369.)

From the same ground also it seems to follow that it is possible for

(*a*) But see in 2 *Chit. Crim. L.* 494, an indictment said to have been drawn in the year 1797, by a very eminent pleader, for the purpose of suppressing an ancient custom of kicking about football on Shrove Tuesday, at Kingston-upon-Thames.

1. *What is a Riot, Rout, &c.*

three persons or more to assemble together with an intention to execute a wrongful act, and also actually to perform their intended enterprise, without being rioters: as if a man assemble a meet company, to carry away a piece of timber or other thing, whereto he pretends a right, that cannot be carried without a great number, if the number be not more than are needful for such purpose, although another man hath better right to the thing so carried away, and that this act be wrong and unlawful, yet it is of itself no riot, except there be withal threatening words used, or other disturbance of the peace. (1 *Haw. c.* 65, *s.* 5; *Lamb.* 178; *Dalt.* c. 137; *R.* v. *Birt*, 5 *C. & P.* 154.)

Much more may any person, in a peaceable manner, assemble a meet company to do any lawful thing, or to remove or cast down any common nuisance. Thus, every private man, to whose house or land any nuisance shall be erected, made, or done, may in peaceable manner assemble a meet company, with necessary tools, and may remove, pull, or cast down such nuisance, and that before any prejudice received thereby; and for that purpose, if need be, may also enter into another man's ground. A man erected a wear across a common river, where people had a common passage with their boats, and divers did assemble with spades, crows of iron, and other things necessary to remove the said wear, and make a trench in his land, that did erect the wear, to turn the water, so as they might the better take up the said wear, and they did remove the said nuisance; this was holden neither any forcible entry, nor yet any riot. (*Dalt c.* 137.)

But in the cases aforesaid, if in removing any such nuisance the persons so assembled shall use any threatening words, (as to say they will do it though they die for it, or such like words,) or shall use any other behaviour, in apparent disturbance of the peace, then it seemeth to be a riot; and therefore, where there is cause to remove any such nuisance, or to do any like act, it is the safest not to assemble any multitude of people, but only to send one or two persons, or if a greater number, yet no more than are needful, and only with meet tools, to remove, pull, or cast down the same, and that such persons tend their business only, without disturbance of the peace, or threatening speeches. (*Dalt. c.* 137.)

Reading riot act not necessary to constitute a riot.

It is not necessary that the riot act should be read to constitute a riot. Before the proclamation can be read, a riot must exist; and the effect of the proclamation will not change the character of the meeting, but make those guilty of a capital offence who do not disperse within one hour after the proclamation is read. (*R.* v. *Furzey*, 6 *C. & P.* 81.)

Legality of intended act immaterial.

Whether the Act intended were of itself lawful or unlawful.]—It hath been generally holden that it is no way material, whether the act intended to be done by such an assembly be of itself lawful or unlawful: from whence it follows, that if three or more persons assist a man to make a forcible entry into lands, to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuisance, or other thing which may lawfully be done in a peaceable manner, they are as properly rioters as if the act intended to be done by them were never so unlawful. (1 *Haw. c.* 65, *s.* 7; *Dalt. c.* 137.) And *per Curiam*, in 12 *Mod.* 648, if one goes to assert his right with force and violence, he may be guilty of a riot.

Any assembly of persons, attended with circumstances calculated to excite alarm, is an unlawful assembly. (*Ante*, 734.)

Punishment for.

Punishment for.]—The punishment of persons guilty of a riot by the common law, is fine or imprisonment, or both; (1 *Hawk. c.* 65, *s.* 12;) by the 3 Geo. IV. c. 114, hard labour may be imposed, either in addition to or in lieu of other punishment. (*See* "*Hard Labour*," Vol. II.)

Expences of prosecution.

Expences of Prosecution.]—By the 7 Geo. IV. c. 64, s. 23, the court may allow the expences of a prosecution for a riot. (*R.* v. *Johnson*, *R. & M. C. C.* 173; "*Costs*," Vol. I.)

II. Rioters demolishing Buildings, &c.

2. *Rioters demolishing Buildings, &c.*

Injuries by rioters.

Stat. 7 & 8 Geo. IV. c. 30, s. 8, enacts, "That if any persons *riotously* and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force *demolish*, pull down, or destroy, or *begin to demolish*, pull down, or destroy, any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland, duly registered or recorded, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any *machinery*, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam-engine, or other engine, for sinking, draining, or working any mine, or any staith, building, or erection, used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine; every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

Punishment for.

The 4 & 5 Vict. c. 56, s. 2, after reciting the above enactment, enacts, "That from and after the commencement of this act, [1st Oct. 1841,] if any person shall be convicted of any of the offences hereinbefore last specified, whether as principal, or as principal in the second degree, or as accessary before the fact, such person shall not be subject to any sentence, judgment, or punishment of death, but shall, instead of the sentence or judgment in and by the said act hereinbefore last-recited ordered to be given or awarded against persons convicted of the said last-mentioned offences, or any of them respectively, be liable, at the discretion of the court, to be transported beyond the seas for any term not less than seven years, or to be imprisoned for any time not exceeding three years."

Place and mode of.

Sect. 4 enacts, "That in awarding the punishment of imprisonment for any offence punishable under this act, it shall be lawful for the court to direct such punishment to be with or without hard labour in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, whether the same be with or without hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet." (*See "Hard Labour,"* Vol. III.)

What an offence within the act.

The stat. 7 & 8 Geo. IV. c. 30, s. 8, not having given any definition of what shall be a riot within the meaning of that enactment, the common law definition of that offence must be resorted to, and in such a case there will be sufficient terror and alarm to support this part of the charge, if any one of her majesty's subjects was terrified. (*Reg.* v. *Langford*, 1 *Car. & M.* 602.)

On an indictment under the stat. for demolishing a house, it is a sufficient demolishing of it if it be so far destroyed as to be no longer a house, and the fact that the rioters left a chimney standing will make no difference. (*Id.*)

If rioters destroy a house by fire, this is a felonious demolition of it within the act, and the persons guilty of such an offence may be convicted on an indictment founded on it, and need not be indicted for arson under sect. 2 of the act (*R.* v. *Harris*, 1 *Car. & M.* 661; *and see R.* v. *Howell*, 9 *C. & P.* 437.)

If persons riotously assemble and demolish a house, really believing that it is the property of one of them, and act *bonâ fide* in the assertion of a supposed right, this will not be a felonious demolition of the house within the statute, even though there be a riot. (*Reg.* v. *Langford*, 1 *Car. & M.* 602.)

But if a part of the object of rioters be to demolish a house, it makes

2. *Rioters demolishing Buildings, &c.*

no difference that they also acted with another object, such as to injure a person who had taken refuge there. (*R.* v. *Howell*, 9 *C. & P.* 437.)

To establish a "beginning to demolish" the house, it must appear that it was to demolish some part of the *freehold*: for instance, the demolition of moveable shop shutters is not sufficient. (*Id.*)

It is not a "beginning to demolish" a house within the act, unless the jury be satisfied that the ultimate object of the rioters was to demolish the whole house, (*R.* v. *Ashton* 1 *Lewin*, 296); and that if they had carried their intention into full effect, they would, in point of fact, have demolished it. For if the rioters merely do an injury to the house, and then go away; as having completed their purpose, it is not a beginning to demolish within the statute. (*R.* v. *Thomas*, 4 *C. & P.* 237; *R.* v. *Price*, 5 *C. & P.* 510; *R.* v. *Howell*, 9 *C. & P* 437; *R.* v. *Adams*, 1 *Car. & M.* 299.) Where a mob, after the obnoxious person had escaped, continued to attack a house *until the police interfered*, it was left to the jury to say, whether they had not the intention to demolish the house, as well as to injure the person; and the jury, being of that opinion, found the defendants guilty. (*R.* v. *Batt*, 6 *C. & P.* 329, *and see R.* v. *Howell*, 9 *C. & P.* 437.)

If in a case of feloniously demolishing a house by rioters, it appear that some of the prisoners set fire to the house itself, and that others carried furniture out of the house and burnt it in a fire made on a gravel walk on the outside of the house, it will be for the jury to say whether the latter were not encouraging and taking part in a general design in destroying the house and furniture, and if so, the jury ought to convict them. (*Reg.* v. *Harris*, 1 *Car. & M.* 651; and see the cases, *ante*, 734.)

If a house be demolished by rioters by means of fire, one of the rioters who is present while the fire is burning may be convicted for the felonious demolition under the statute, although he is not proved to have been present when the house was originally set on fire. (*Reg.* v. *Simpson*, 1 *C. & M.* 669; *see R.* v. *Howell*, 9 *C. & P.* 437.)

Seamen rioting.

As to the offence of seamen riotously preventing the loading of vessels, &c., as provided against by the 33 Geo III. c. 67, s. 1, *see post*, "*Seaman.*"

Liability of hundred.

As to remedies against the hundred, in case of damage done by rioters, *see* the 7 & 8 Geo. IV. c. 31; "*Hundred*," Vol. III.

III. How Riots may be restrained by a Private Person.

How restrained by a private person

By the common law, any private person (and this of course includes the military) may lawfully and ought to endeavour to suppress a riot, without the intervention of a magistrate, by staying those whom he shall see engaged therein from executing their purpose, and also by stopping others whom he shall see coming to join them, and by using arms for this purpose, or for his self-defence, if it become necessary. (*Popham*, 121; *Kel.* 76; 5 *C. & P.* 261 (*a*)). However, it seems extremely hazardous for private persons to proceed to these extremities; and such violent methods seem only proper against such riots as savour of rebellion. (1 *How. c.* 65, *s.* 11.) There is a great difference between the right of a private person in a case of intended felony and of breach of the peace; it is lawful for him to do any thing to prevent the perpetration of a felony. (*Vide per Chambre, J., Handcock* v. *Baker*, 2 *B. & P.* 264; *ante*, "*Arrest*," Vol. I.)

Not only is a private person thus empowered to suppress a riot, but he is *bound* when called upon, under pain of fine or imprisonment, or both, to

(*a*) In the riots of 1780, however, this matter was much misunderstood, and a general persuasion prevailed that no indifferent person could interpose without the authority of a magistrate; in consequence of which much mischief was done, which might otherwise have been prevented. (*Per Heath, J., in Handcock* v. *Baker*, 2 *B. & P.* 264.)

yield a ready and implicit obedience to the call of the magistrate, and to do his utmost in assisting him to suppress it. (*See per Littledale, J., in R.* v. *Neale*, 9 *C. & P.* 431; *per Tindal, C. J.*, 5 *C. & P.* 261.)

4. *How restrained by a Constable or other Peace Officer.*

IV. How restrained by a Constable or other Peace Officer.

How restrained by a constable.

By the common law, the sheriff, constable, and other peace officers, may and ought to do all that in them lies, towards the suppressing of a riot, and may command all other persons to assist therein. (1 *Haw. c.* 65, *s.* 11.)

The 1 & 2 Will. IV. c. 41, enables magistrates to appoint special constables on occasions of tumults, riots, or felonies, and enables those constables to act on such occasions, and contains other provisions relative thereto. These will be found collected under *title*, "*Constable*," Vol. I.

V. How restrained by One Justice; and herein of the Riot Act.

How restrained by one justice.

By the common law, a justice of the peace, like a private individual, has power to restrain rioters (*See R.* v. *Billingham*, 4 *D. & R. M. C.* 127.)

Several statutes, as we shall proceed to notice, have also been passed, fully arming them with additional powers for the suppression of riots.

These powers they are bound to execute, and they should accordingly keep the peace, and restrain the rioters, and pursue and take them; and if they fail in their duty in this respect, it is a misdemeanor punishable on indictment or information with fine or imprisonment, or both. (*R.* v. *Pinney*, 3 *B. & Ad.* 947; 5 *C. & P.* 245, *S. C.*; *Reg.* v. *Neale*, 9 *C. & P.* 431.)

The mode of dispersing an unlawful assembly may be very different according to the circumstances attending it in each particular case; and an unlawful assembly may be so far verging towards a riot, that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly; and there may be cases where the magistrates will be bound to use force to disperse an unlawful assembly. (*R.* v. *Neale*, *supra.*)

They may call on all the queen's subjects to assist them, which assistance those subjects are bound to render upon reasonable warning, (*supra,*) and in point of law a magistrate would be justified in giving fire-arms to those who thus came to assist him; but it would be imprudent in him to give them to those who might not know their use, and who might be under no control, and who, not being used to act together, might be cut off from the rest of the force, and the arms by those means get into the hands of the rioters. (*Rex* v. *Pinney*, 5 *Car. & P.* 254; 3 *B. & Ad.* 946, *S. C.*; *and see R.* v. *Kennett*, 5 *C. & P.* 282.)

It is no part of the duty of a magistrate to go out and head the constables, or to marshal and arrange them; neither is it any part of his duty to hire men to assist him in putting down a riot, nor to keep a body of men as a reserve to act as occasion may require; neither is he bound to call out the Chelsea pensioners any more than any of the rest of the queen's subjects; nor is it any part of his duty to give any orders respecting the fire-arms in gunsmiths' shops; nor is a magistrate bound to ride with the military; if he gives the military officers orders to act, that is all that is required of him. (*Rex* v. *Pinney*, *supra.*)

Under 34 Edw. III. c. 1.

By the 34 Edw. III. c. 1, the justices of the peace shall have power to restrain rioters, and to arrest and chastise them according to their offences; and cause them to be imprisoned and duly punished according

5. *How restrained by One Justice; and herein of the Riot Act.*

to the law and custom of the realm, and according to that which to them shall seem best to do, by their discretions and good advisement.

And this statute hath been liberally construed for the advancement of justice, for it hath been resolved, that if a justice find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders and bind them to their good behaviour, or imprison them if they do not offer good bail; but that he may also authorize others to arrest them by a bare verbal command, without other warrant; and that by force thereof, the person so commanded may pursue and arrest the offenders in his absence as well as presence. Also it is said, that, after a riot is over, any one justice may send his warrant to arrest any person who was concerned in it, and also that he may send him to gaol till he shall find sureties for his good behaviour. (1 *Haw. c.* 65, *s.* 16.)

But it seems to be agreed that no one justice hath any power by force of this statute either to record a riot upon his own view, or to take an inquisition thereof after it is over. Also, if one justice, proceeding upon this statute, shall arrest an innocent person as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing himself, because no single justice is by this statute made a judge of the said offence. But if a riot shall be committed by persons armed in an unusual manner, contrary to the statute of *Northampton*, 2 Edw. III. c. 3, and any one justice acting *ex officio*, in pursuance of the statute, seize the armour, and imprison the offender, and make a record of the whole matter, such a record cannot be traversed, because it is made by one acting in a judicial capacity. And for the same reason, if a justice proceeding on the statute of the 15 Rich. II., against forcible entries and detainers, shall upon his own view record a riot, which shall be committed in the making of any such forcible entry or detainer, a riot so recorded cannot be traversed. Also, if a justice, acting as a judge by any statute whatsoever empowering him so to do, make a record upon his view of a riot committed in his presence, such record shall not be traversed; for the law gives such uncontrollable credit to all matters of record made by any judge of record, as such, that it will never admit of an averment against the truth thereof. (1 *Haw. c.* 65, *s.* 17.)

Under 1 Geo. I. st. 2, c. 5, where there are more than twelve rioters.

But if the rioters are above the number of twelve, the offence is greatly enhanced, and the power of one justice very much enlarged, by the 1 Geo. I. st. 2, c. 5, commonly called the *Riot Act*, and intituled "An Act for preventing Tumults and Riotous Assemblies, and for the more speedy and effectual punishing the Rioters." Sect. 1, after reciting, that "Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the public peace, and the endangering of his majesty's person and government, and the same are yet continued and fomented by persons disaffected to his majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences; and by such rioters his majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his majesty; therefore, for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein;" enacts, "That if any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, at any time after the last day of July, in the year of our Lord 1715, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the king's name, in the form hereinafter directed, to disperse themselves and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such

Rioters remaining one hour after proclamation, guilty of felony.

proclamation made,) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation, that then such continuing together to the number of twelve or more, after such command or request made by proclamation. shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy." [*See* now as to the punishment, the 7 Will. IV. & 1 Vict. c. 91, *post*, 743.]

5. *How restrained by One Justice; and herein of the Riot Act.*

If the proclamation be read several times, the hour is to be computed from the first reading. (*R.* v. *Woolcock*, 5 *C. & P.* 516.)

If there be such an assembly that there would have been a riot if the parties had carried their purpose into effect, this is within the act, and whether there was a cessation or not is a question for a jury. (*Id.*)

The indictment under this act need not charge the riot to have been *in terrorem populi*. (*R.* v. *James*, 5 *C. & P.* 153.)

How the proclamation shall be made.

Sect. 2. "The order and form of the proclamation that shall be made by the authority of this act, shall be as hereafter followeth; (that is to say,) the justice of the peace, or other person authorized by this act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while proclamation is making, and after that shall openly and with loud voice make or cause to be made proclamation in these words, or like in effect:—

The proclamation.

'*Our sovereign lord the king chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.* '*God save the King.*'

Justices, &c. to resort to the place.

And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorized, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assemblies shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid."

During the present reign, the magistrate will, of course, take care to make the proclamation in the queen's name, and not as if a king were reigning.

Great care must be taken in reading the proclamation correctly. Thus, if in reading it the magistrate omit the words "God save the Queen," at the end of it, persons remaining together for an hour after such reading of the proclamation, cannot be capitally convicted under the act. (*R.* v. *Child and others*, 4 *C. & P.* 442.)

Where the indictment omitted the words "of the reign of," in setting out the proclamation, which were contained in such proclamation, *Patteson*, J., held the variance to be fatal. (*R.* v. *Woolcock*, 5 *C. & P.* 516.) Those words are not in the form given by the act.

It may be here remarked, that a riot is not the less a riot, nor an illegal assembly the less so, because this proclamation has not been made; the effect of the act being to make the parties guilty of a capital offence, if they do not disperse within an hour after the proclamation; and if the proclamation be not read, or be improperly so, still the common law offence remains. (*R.* v. *Fursey*, 6 *C. & P.* 81.)

The stat. contains no provisions as to principals in the second degree, or accessaries; there may, however, be such principals and accessaries. (1 *Russ.* 3*rd ed.* 276; *R.* v. *Boyce*, 4 *Burr.* 2073.)

On an indictment under the act it was not proved that the prisoner was among the mob during the whole of the hour, but he was proved to have been there at various times during the hour; it was held, that it was a question for the jury, upon all the circumstances, whether he did substantially continue making part of the assembly for the hour; for

5. *How restrained by One Justice; and herein of the Riot Act.*

although he might have occasion to separate himself for a minute or two, yet if in substance he was there during the hour, he would not be thereby excused. (*R.* v. *James*, 1 *Russ.* 3*rd ed.* 277.)

Persons so assembled, and not dispersing within an hour, to be seized.

Sect. 3. "If such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, sheriff, or under-sheriff of the county where such assembly shall be, and also to and for every high or petty constable, and other peace officer within such county, and also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff, or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorized and empowered to command all his majesty's subjects of age and ability to be assisting to them therein), to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made, as aforesaid, and forthwith to carry the persons so apprehended before one or more of his majesty's justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences, according to law; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt, in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace officer, and all and singular persons being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the king's majesty, his heirs, and successors, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt, as aforesaid."

And if they make resistance, the persons killing them, &c to be indemnified.

Opposing the proclamation, felony

Sect. 5. "If any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt, any person or persons that shall begin to proclaim or go to proclaim, according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons, so beginning or going to make such proclamation, as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy; and that also every such person or persons so being unlawfully, riotously, and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindered, as aforesaid, shall likewise, in case they or any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy." (See now as to the punishment, 7 Will. IV. & 1 Vict. c. 91, *post*, 743.)

And persons so assembled, if the proclamation be hindered, shall nevertheless suffer as felons.

Act to be read at sessions, &c.

Sect. 7. "This act shall be openly read at every quarter session, and at every leet or law day."

Prosecution within twelve months.

Sect. 8. "No person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed."

Sects. 9 and 10 enact, that the sheriffs, stewards, &c., in Scotland, shall have the same power as justices, &c. have in England; and inflict a punishment on persons offending there.

5. *How restrained by One Justice; and herein of the Riot Act.*

The 7 Will. IV. & 1 Vict. c. 91, s. 1, reciting the stat. 1 Geo. I. c. 5, enacts, "That if any person shall, after the commencement of this act, (1st October, 1837,) be convicted of any of the offences therein mentioned, such person shall not suffer death, or have sentence of death awarded against him or her for the same, but shall be liable, at the discretion of the court, to be transported beyond the seas for the term of the natural life of such person, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

Punishment for offence.

By the 5 & 6 Vict. c. 38, s. 1, the offence is not triable at any quarter sessions.

Not triable at sessions.

VI. How restrained by Two Justices.

By the 13 Hen. IV. c. 7, s. 1, if any riot, assembly, or rout of people, against the law, be made, the justices, three or two of them at the least, and the sheriff, or under-sheriff, shall come with the power of the county if need be.

13 Hen. IV. c. 7.

And by the 2 Hen. V. c. 8, s. 2, the king's liege people, being sufficient to travel, shall be assistants to them, upon reasonable warning, to ride with them in aid to resist such riots, routs, and assemblies, on pain of imprisonment, and to make fine and ransom to the king.

2 Hen. V. c. 8.

If any Riot, Assembly, or Rout of People, against the Law, be made.]—It is said that the justices are not only empowered hereby to raise the power of the county to assist them in suppressing a riot, which shall happen within their own view or hearing, but also that they may safely do it, upon a credible information given them of a notorious riot happening at a distance, whether there were any such riot in truth or not; for it may be dangerous for them to stay till they can get certain information of the fact: but they seem to be punishable for alarming the country in this manner, without such probable ground for their proceeding as would induce a reasonable man to think it necessary and convenient. (1 *Haw. c.* 65, *s.* 22.)

Assembly.]—It seems clear from hence, that if the justices, in going towards the place where they have heard that there is a riot, shall meet persons coming from thence riotously arrayed, they may arrest them for being assembled together in such an unlawful manner, and also make a record thereof; for the statute extends to all other unlawful assemblies whatsoever, as well as to riots. (1 *Haw. c.* 65, *s.* 22.)

The King's liege People.]—Except women, clergymen, persons decrepit, and infants under the age of fifteen.

To resist such Riots.]—And also to arrest the rioters, and conduct them to prison.

And shall arrest them.]—13 Hen. IV. c. 7, s. 1.

And, if they shall escape, they may take them on a fresh pursuit; but they cannot at another time award any process against them on the record, but ought to send the record into the King's Bench, that process may issue thereon from thence: yet there seems to be no doubt but that they may arrest them for their trespass on the aforesaid statute (34 Edw. III.), in order to compel them to find sureties for their good behaviour. (1 *Haw. c.* 65, *s.* 24.)

And by the 13 Hen. IV. c. 7, s. 1, the same justices and sheriff, or under-sheriff, shall have power to record that which they shall find so done in their presence against the law; by which record the offenders shall be convict in the same manner and form as is contained in the statute of Forcible Entries. (*See the Forms, post,* Nos. 6 & 7.)

13 Hen. IV. c. 7.

Shall have Power to record.]—And this they may do, whether the of-

6. *How restrained by Two Justices.*

fenders be in custody at the same time, or have escaped. (1 *Haw. c.* 65, *s.* 24.)

Shall be convict.]—And it seemeth to be certain that the record of a riot, expressly mentioned to have happened within the view of the justices by whom it is recorded, is a conviction of so great authority, that it can no way be traversed, however little ground of truth there might be to affirm that any riot at all was committed, or however innocent the parties may be of the fact recorded against them. (1 *Haw. c.* 65, *s.* 25.)

However, it seemeth clear, that if, in such a record of a riot, it be contained that the party was guilty therein of a felony, or maim, or rescous, the party shall be concluded thereby as to the riot only, and not as to any of the other matters; because the justices have by this statute a judicial authority over no other offences except riots, routs, and unlawful assemblies. (1 *Haw. c.* 65, *s.* 26.)

And, inasmuch as such a final record is a conviction of the parties, as to all such matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact: for, since the parties are excluded from denying the truth of such record, and have no other remedy to defend themselves against it, but only by advantage of the insufficiency of what is contained in it, they may justly demand the benefit of excepting to it, if it do not expressly show both that they are guilty within the meaning of the statute, and also how far they are guilty, and that the justices have pursued the power so given them by the said statute. From the same ground it seems also to follow, that such a record may be excepted against, if it do not appear to have been made by the sheriff or under-sheriff, in concurrence with the justices. (1 *Haw. c.* 65, *s.* 26.)

And this record ought to remain with one of the justices, and shall not be left amongst the records of the sessions; it being made out of sessions, and not appointed to be certified thither. (*Dalt. c.* 82.)

In the same Manner and Form as is contained in the Statute of Forcible Entries.]—That is, the statute of the 15 Rich. II. c. 2. And thereupon it is said that the offenders, being under the arrest of the justices, and also convicted by a record of their offence, ought immediately to be committed to gaol by the same justices, till they shall make fine and ransom to the king; which can be assessed by no other justices of the peace except those by whom the record of the offence was made. (1 *Haw. c.* 65, *s.* 23.)

And this fine, Mr. *Dalton* (c. 82) says, the justices shall cause to be estreated into the exchequer, that so it may be levied to the king's use; and then they are to deliver the offenders again.

But Mr. *Hawkins* says, that it hath been questioned whether the justices can safely dismiss the offenders upon their paying such a fine as shall be imposed upon them, without some judgment for their imprisonment as well as fine: because it is enacted by the 2 Hen. VIII. c. 8, that such rioters attainted of great and heinous riots shall have one whole year's imprisonment at the least, without being let out of prison by bail or mainprize; and that the rioters attainted of petty riots shall have imprisonment as best shall seem to the king or to his council. (1 *Haw. c.* 65, *s.* 35.)

13 Hen. IV. c. 7.

And, by the 13 Hen IV. c. 7, s. , if the offenders be departed before the coming of the said justices and sheriff, or under-sheriff, the same justices, three or two of them, shall diligently inquire within a month after such riot, assembly, or rout of people so made, and thereof shall hear and determine according to the law of the land. (*See Form, post,* No. 10.)

The same Justices.]—It is generally said that any justices of the county may take such an inquiry, whether they dwell near the place where the riot happened, or at a distance, or whether they went to view the riot or not: for the statute ought to be construed as largely as the words will

bear in favour of the justices' power in the suppressing of such riots; and therefore those words in the statute, "that the same justices shall inquire," ought to be thus expounded: that the same justices who were before empowered to raise the posse shall inquire, and that is, any justices in the county (1 *Haw. c.* 65, *s.* 32.)

8. *How restrained by Two Justices.*

Shall diligently inquire.]—This is, by a jury; in order to which it is enacted by the 19th Hen. VII. c. 13, that the sheriff, on their precept directed to him, shall, on pain of 20*l.*, return twenty-four persons, whereof every of them shall have lands and tenements within the shire to the yearly value of 20*s.* of charter land or freehold, or 26*s.* 8*d.* of copyhold, or of both, over and above all charges; and he shall return upon every juror in issues, at the first, 20*s.*, and at the second, 40*s.*

19 Hen. VII. c. 13.

Note.—Charter-land had its name from a particular form in the charter or deed, which, ever since the reign of Hen. VIII., hath been disused. (1 *Inst.* 6.)

Within a Month.]—That is, if they do not make inquiry within a month, they are punishable for the neglect. Yet they may inquire after the month; for the lapse of a month doth not determine their authority, but only subjects them to a penalty. (*R.* v. *Ingram*, 2 *Salk.* 593; 1 *Lord Raym.* 215, *S. C.*)

Shall hear and determine according to the Law of the Land.]—And therefore they may award process under their own teste against those who shall be indicted before them of any of the offences above mentioned, according to the form of this statute; and also may award the like process for the trial of a traverse of such an inquisition; and do all other things in relation thereunto, which are of course incident to all courts of record. (1 *Haw. c.* 65, *s.* 34.)

And the riot being so found by inquisition, the justices must make a record thereof in writing of such their inquiry or presentment found before them; which record also is to remain with one of the justices. (*Dalt. c.* 82.)

And by the 13 Hen. IV. c. 7, s. 2, if the truth cannot be found in the manner as is aforesaid, then, within a month then next following, the justices, three or two of them, and the sheriff or under-sheriff, shall certify before the king and his council all the deed and circumstances thereof, which certificate shall be of the like force as the presentment of twelve men; upon which certificate the offender shall be put to answer, and shall be punished according to the discretion of the king and his council.

13 Hen. IV. c. 7.

Sect. 3. And, if they do traverse the matter so certified, the certificate and traverse shall be sent into the King's Bench to be tried.

And, by the 19 Hen. VII. c. 13, if the offence be not found, by reason of any maintenance or embracery of the jurors, then the same justices and sheriff, or under-sheriff, shall, in the same certificate, certify the names of the maintainers and embracers, with their misdemeanors.

19 Hen. VII. c. 13.

Shall certify.]—And it seemeth certain that such certificate, being in nature of an indictment at the common law, ought to comprehend the certainty of time, place, and persons, and other material circumstances, both of the riot and maintenance. (1 *Haw. c.* 65, *s* 13.)

Before the King and his Council.]—It seems clear by the council being here distinguished both from the Chancery and King's Bench, that the certificate ought to be made to the privy council board, and not to either of those courts, which, in some statutes relating to judicial proceedings, are taken for the king's council. (1 *Haw. c.* 65, *s.* 41.)

And, by the 2 Hen. V. c. 8, the said justices and other officers shall execute their offices aforesaid at the king's costs, in going and continuing in doing their said offices, by payment thereof to be made by the sheriff, by indentures betwixt the said sheriff and justices, and other officers aforesaid, whereof the sheriff, upon his account in the exchequer, shall have due allowance.

2 Hen. V. c. 8.

In order to the defraying of which, the said statute directs the fines of the offenders to be enlarged, and thereout the sheriff may pay the charges

6. *How restrained by Two Justices.*

of the said justices, and of the jury, that is, for their diet, and the sheriff's fees, and the like. (*Dalt. c.* 82.)

Sect. 4. And the justices dwelling nighest in the county where such riot, assembly, or rout shall be, together with the sheriff or under-sheriff, shall do execution of the said statute of the 13 Hen. IV., every one upon pain of 100*l.* to the king.

The Justices dwelling nighest.]—Although these only are liable to this penalty, yet if any others, on notice, shall neglect to supply their default, they are fineable at discretion. (1 *Haw. c.* 65, *s.* 48.)

But if any justices, who do not dwell nearest to the place. do actually execute the statute, they excuse all the rest. (1 *Haw. c.* 65, *s.* 46.)

Dwelling nighest in the County.]—Therefore, if they dwell nighest, but in another county, they are not in danger of this penalty. (1 *Haw. c.* 65, *s.* 45.)

Shall do Execution of the said Statute.]—That is, in the whole, and not in part only; as by recording a riot, and committing the parties. (1 *Haw. c.* 65, *s.* 50.)

Alehouses.

By the 9 Geo. IV. c. 61, s. 20, and 1 Will. IV. c. 64, s. 11, two justices may order the closing of doors of public-houses and beer-houses during riots. (*See* "*Alehouse,*" Vol. I. pp. 71, 96.)

VII. How by Process out of Chancery.

2 Hen. V. c. 8.

By the 2 Hen. V. c. 8, if default be found in the two justices, sheriff, or under-sheriff, then, at the instance of the party grieved, a commission shall be issued under the great seal, to inquire as well of the truth of the case for the complainant, as of such default.

2 Hen. V. c. 9.
8 Hen. VI. c. 14.

And by the 2 Hen. V. c. 9, and 8 Hen. VI. c. 14, rioters shall be taken by writ and proclamation out of chancery, on suggestion of two justices and the sheriff, of the common fame of such riot.

VIII. Seditious and Unlawful Meetings.

Certain societies suppressed.

By the 39 Geo. III. c. 79, s. 1, after reciting that a traitorous conspiracy had long been carried on in conjunction with the person exercising the powers of government in France, to overturn the laws and government in Great Britain and Ireland, it is enacted, that all societies, calling themselves United Englishmen, United Scotchmen, United Irishmen, and United Britons, and the society commonly called the London Corresponding Society, and all other corresponding societies of any other city, town, or place, shall be suppressed and prohibited. (*See* the 57 Geo. III. c. 19, *post*, 753.)

Societies the members whereof shall take any unlawful oath, &c., or which shall have members, &c., not publicly known; or entered in regular books; or which shall act in distinct branches, are unlawful confederacies.

Sect. 2. "From and after the passing of this act, all and every the said societies, and also every other society now established, or hereafter to be established, the members whereof shall, according to the rules thereof, or to any provision or agreement for that purpose, be required or admitted to take any oath or engagement, which shall be an unlawful oath or engagement within the intent and meaning of an act, passed in the thirty-seventh year of his majesty's reign, intituled 'An Act for more effectually preventing the administering or taking of Unlawful Oaths," [*see* this act, *title*, "*Oaths,*" Vol. V.] or to take any oath not required or authorized by law; and every society, the members whereof, or any of them, shall take, or in any manner bind themselves by any such oath or engagement, on becoming or in consequence of being members of such society; and every society, the members whereof shall take, subscribe, or assent to any test or declaration not required by law, or not authorized in manner hereinafter mentioned; and every society, of which the names of the members, or of any of them, shall be kept secret from the society at large, or which shall have any committee or select body so chosen or

appointed, that the members constituting the same shall not be known by the society at large to be members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer so chosen or appointed, that the election or appointment of such persons to such offices shall not be known to the society at large, or of which the names of all the members, and of all committees or select bodies of members, and of all presidents, treasurers, secretaries, delegates, and other officers, shall not be entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society; and every society which shall be composed of different divisions or branches, or of different parts, acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate, or other officer elected or appointed by or for such part, or to act as an officer for such part, shall be deemed and taken to be unlawful combinations and confederacies; [*see* the 57 Geo. III. c. 19, s 27, *post*, 755, enacting that this shall not extend to Quakers' meetings, &c.,] and every person who, from and after the passing of this act, shall become a member of any such society, or who, being a member of any such society at the passing of this act, shall afterwards act as a member thereof; and every person who, after the passing of this act, shall directly or indirectly maintain correspondence or intercourse with any such society, or with any division, branch, committee, or other select body, president, treasurer, secretary, delegate, or other officer, or member thereof as such, or who shall, by contribution of money or otherwise, aid, abet, or support such society, or any members or officers thereof as such; shall be deemed guilty of an unlawful combination and confederacy."

8. *Seditious Meetings, &c.* 39 Geo. III. c. 79.

Sect. 3. "Nothing herein contained shall extend to any declaration to be taken, subscribed, or assented to by the members of any society, in case the form of such declaration shall have been first approved and subscribed by two or more of his majesty's justices of the peace for the county, stewartry, riding, division, or place, where such society shall ordinarily assemble, and shall have been registered with the clerk of the peace, or his deputy, for such county, stewartry, riding, division, or place, for which there shall be paid a fee of 1*s.* and no more; but that such approbation of the justices as aforesaid shall remain valid and effectual no longer than until the next general session for such county, stewartry, riding, division, or place, unless the same shall, on application made by the parties concerned, be confirmed by the major part of the justices present at such general session; and if the same shall not be then and there so confirmed, the provisions of this act shall from thenceforth extend to such declaration, and to all societies or persons subscribing the same, in so far as may relate to all acts which may be done by them, or any of them, subsequent to the holding of such general session."

Act not to extend to declarations approved by two justices, and registered with clerk of peace, if approbation confirmed at sessions.

Sect. 4. "No person who, at or before the passing of this act, shall be, or shall have been a member of any such society, shall be liable to any pain or penalty for having been a member of such society at or before the passing of this act, in case such person shall not in any manner act as a member of such society at any time after the passing of this act."

Former members not acting after passing this act, not liable to penalty.

Sect. 5. "And whereas certain societies have been long accustomed to be holden in this kingdom under the denomination of lodges of Freemasons, the meetings whereof have been in great measure directed to charitable purposes;" it is enacted, "That nothing in this act shall extend to the meetings of any such society or lodge, which shall, before the passing of this act, have been usually holden under the said denomination and in conformity to the rules prevailing among the said societies of Freemasons."

Not to extend to regular lodges of Freemasons held before passing of act.

Sect. 6. "This exemption shall not extend to any such society, unless two of the members composing the same shall certify, upon oath, (which oath any justice of the peace or other magistrate is hereby empowered to administer,) that such society or lodge has, before the passing of this act,

but two members of each lodge shall certify the same on oath, and deposit such cer-

8. *Seditious Meetings, &c.*

39 Geo. III. c. 79.

tificate within two months with the clerk of peace, with whom the name of the society, the names of the members, and the time and place of meeting, shall be registered before March 25, yearly.

been usually held under the denomination of a lodge of Freemasons, and in conformity to the rules prevailing among the societies or lodges of Freemasons in this kingdom; which certificate, duly attested by the magistrate before whom the same shall be sworn, and subscribed by the person so certifying, shall within the space of two calendar months after the passing of this act, be deposited with the clerk of the peace for the county, stewartry, riding, division, shire, or place, where such society or lodge hath been usually held: Provided also, that this exemption shall not extend to any such society or lodge, unless the name or denomination thereof, and the usual place or places, and the time or times of its meetings, and the names and descriptions of all and every the members thereof, be registered with such clerk of the peace as aforesaid, within two months after the passing of this act, and also on or before the twenty-fifth day of March in every succeeding year."

Clerk of peace to lay such certificate and registry before the general session yearly, who may order any lodge to be discontinued, if likely to be injurious to the public peace.

Sect. 7. "The clerk of the peace, or the person acting in his behalf, in any such county, stewartry, riding, division, shire, or place, is hereby authorized and required to receive such certificate, and make such registry as aforesaid, and to enrol the same among the records of such county, stewartry, riding, division, shire, or place, and to lay the same, once in every year, before the general session of the justices for such county, stewartry, riding, division, shire, or place; and that it shall and may be lawful for the said justices, or for the major part of them, at any of their general sessions, if they shall so think fit, upon complaint made to them, upon oath, by any one or more credible persons, that the continuance of the meetings of any such lodge or society is likely to be injurious to the public peace and good order, to direct that the meetings of any such society or lodge within such county, stewartry, riding, division, shire, or place, shall from thenceforth be discontinued; and any such meeting held, notwithstanding such order of discontinuance, and before the same shall, by the like authority, be revoked, shall be deemed an unlawful combination and confederacy under the provisions of this act." [*See* the 53 Geo. III. c. 115, s. 89.]

Offenders may be proceeded against, either summarily before one justice, or by indictment.

Sect. 8. "Every person who, at any time after the passing of this act, shall in breach of the provisions thereof be guilty of any such unlawful combination and confederacy, as in this act is described, shall and may be proceeded against for such offence in a summary way, either before one or more justice or justices of the peace for the county, stewartry, riding, division, city, town, or place, where such person shall happen to be, or by indictment to be preferred in the county, riding, division, city, town, or place in England wherein such offence shall be committed, or by indictment in the court of justiciary, or in any of the circuit courts in Scotland, if the offence shall be committed in Scotland; and every person being convicted [Form No. 12, *post*] of any such offence, on the oath of one or more credible witness or witnesses, by such justice or justices as aforesaid, shall be by him or them committed to the common gaol or house of correction for such county, stewartry, riding, division, city, town, or place, there to remain, without bail or mainprize, for the term of three calendar months, or shall be by such justice or justices adjudged to forfeit and pay the sum of 20*l.*, as to such justice or justices shall seem meet; and in case such sum of money shall not be forthwith paid into the hands of such justice or justices, he or they shall, by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale; and for want of sufficient distress, shall commit such offender to the common gaol or house of correction of such county, stewartry, riding, division, city, town, or place as aforesaid, for any time not exceeding three calendar months; and every person convicted of any such offence upon indictment by due course of law, shall and may be transported for the term of seven years, in the manner provided by law for transportation of offenders, or imprisoned for any time not exceeding two years, as the court before whom

Persons convicted before a justice shall forfeit 20*l.*, or suffer three months' imprisonment, and persons convicted on indictment shall be transported for seven years.

8. *Seditious Meetings, &c.*

39 Geo. III. c. 79.

such offender shall be tried shall think fit; and every such offender who shall be ordered to be transported, shall be subject and liable to all laws concerning offenders ordered to be transported."

Justices may mitigate punishment.

Sect. 9. "It shall be lawful for the justice or justices of the peace, by or before whom any persons shall, in pursuance of this act, be convicted of any unlawful combination or confederacy, and such justice and justices is and are hereby authorized and empowered (if he or they shall see cause) to mitigate and lessen the punishment hereinbefore directed to be inflicted upon any offender against this act, so convicted as aforesaid, so as such punishment be not thereby reduced to less than one third of the punishment hereby directed to be inflicted as aforesaid, whether such punishment shall be by imprisonment or fine."

Persons once prosecuted, not liable to other prosecution.

Sect. 10. "Any person who shall be prosecuted before any justice or justices of the peace, in a summary way, for any offence against this act, and shall be convicted or acquitted by such justice or justices, shall not afterwards be prosecuted, or be liable to be prosecuted, by indictment or otherwise, for the same offence; and so in like manner any person who shall be convicted or acquitted upon any indictment for any offence against this act, shall not afterwards be prosecuted, or be liable to be prosecuted, before any justice or justices of the peace, in a summary way, for the same offence."

Offenders may be indicted, if not prosecuted under this act.

Sect. 11. "Nothing in this act contained shall extend to prevent any prosecution by indictment, or otherwise, for any thing which shall be an offence within the intent and meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act, and convicted or acquitted of such offence; save only, that no person shall be prosecuted for having been, before the passing of this act, a member of any society hereby declared to be an unlawful combination and confederacy, if such person shall not in any manner have acted as a member of such society after the passing of this act."

Penalty for permitting unlawful meetings.

Sect. 13. "If any person shall knowingly permit any meeting of any society hereby declared to be an unlawful combination or confederacy, or of any division, branch or committee of such society, to be held in his or her house or apartment, such person shall, for the first offence, forfeit the sum of 5*l.*, and shall, for any such offence committed after the date of his or her conviction for such first offence, be deemed guilty of an unlawful combination and confederacy in breach of this act."

Justices, on oath of an unlawful meeting being held, may declare the licence of the house forfeited.

Sect. 14. "It shall be lawful for any two or more justices of the peace, acting for any county, stewartry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society, hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held, after the passing of this act, at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, to adjudge and declare the licence or licences for selling ale, beer, wine, or spirituous liquors, granted to the person or persons keeping such house, room, or place, to have been forfeited, [*see* Form No. 11, *post*,] and the person or persons so keeping such house, room, or place, shall, from and after the day of the date of such adjudication and declaration, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to, if such licence or licences had expired, or otherwise determined on that day." (*See* "*Alehouse*," Vol. I.)

Every place for lecturing, debating, or reading books, newspapers, &c., where money shall be paid, shall be

Sect. 15. "And whereas divers places have of late been used for delivering lectures or discourses, and holding debates, which are not within the provisions of the act, passed in the 36th year of his majesty's reign, for the more effectually preventing seditious meetings and assemblies (*a*), but which lectures, discourses, or debates, have in many

(*a*) This act of 36 Geo. III. c. 8, was to continue for three years, from the 18th of December, 1795, and from thence to the end of the then next session of parliament.

8. *Seditious Meetings, &c.*

39 Geo. III. c. 79. deemed a disorderly house under 36 Geo. III. c. 8, unless previously licensed.

instances been of a seditious and immoral nature; and other places have of late been used for seditious and immoral purposes, under the pretence of being places of meeting for the purpose of reading books, pamphlets, newspapers, or other publications; be it further enacted. That every house, room, field, or other place, at or in which any lecture or discourse shall be publicly delivered, or any public debate shall be had on any subject whatever, for the purpose of raising or collecting money or any other valuable thing, from the persons admitted, or to which any person shall be admitted by payment of money, or by any ticket or token of any kind delivered in consideration of money or any other valuable thing, or in consequence of paying or giving, or having paid or given, or having agreed to pay or give, in any manner, any money or other valuable thing, or where any money or other valuable thing shall be received from any person admitted either under pretence of paying for any refreshment or other thing, or under any other pretence, or for any other cause, or by means of any device or contrivance whatever; and every house, room, or place, which shall be opened or used as a place of meeting, for the purpose of reading books, pamphlets, newspapers, or other publications, and to which any person shall be admitted by payment of money, or by any ticket or token of any kind delivered in consideration of money or other valuable thing, or in consequence of paying or giving, or having paid or given, or having agreed to pay or give, any money or other valuable thing, or where any money or other valuable thing shall be received from any person admitted either under pretence of paying for any refreshment or other thing, or under any other pretence, or for any other cause, or by means of any device or contrivance whatever; shall be deemed a disorderly house or place, within the intent and meaning of the said act, passed in the thirty-sixth year of his majesty's reign, for the more effectually preventing seditious meetings and assemblies, unless the same shall have been previously licensed in manner hereinafter mentioned; and the person by whom such house, room, field, or place, shall be opened or used, for any of the purposes aforesaid, shall forfeit the sum of 100*l.* for every day or time that such house, room, field, or place, shall be opened or used as aforesaid, to such person as will sue for the same, and be otherwise punished as the law directs in cases of disorderly houses; and every person managing or conducting the proceedings, or acting as moderator, president, or chairman, at such house, room, field, or place, so opened or used as aforesaid, or therein debating, or delivering any discourse or lecture, or furnishing or delivering any book, pamphlet, newspaper, or other publication as aforesaid; and also every person who shall pay, give, collect, or receive, or agree to pay, give, collect or receive, any money, or any thing, for or in respect of the admission of any person into any such house, room, field, or place, or shall deliver out, distribute, or receive any such ticket or tickets, or token or tokens as aforesaid, knowing such house, room, field, or place to be opened or used for any such purpose as aforesaid; shall, for every such offence, forfeit the sum of 20*l.*"

Penalty on persons opening such houses, conducting the proceedings, debating, furnishing books, paying or collecting money for admission, &c. 20*l.*

Person appearing as master liable to prosecution, although not the real occupier of the house.

Sect. 16. "Any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the command, government, or management of any such house, room, field, or place as aforesaid, shall be deemed and taken to be a person by whom the same is opened or used as aforesaid, and shall be liable to be sued or prosecuted, and punished as such, notwithstanding he or she be not in fact the real owner or occupier thereof."

Justices, by information on oath, suspecting any place is opened for lecturing, &c., may demand admittance, and if refused, the place shall be deemed disorderly, and the person so re-

Sect. 17. "It shall be lawful for any justice or justices of the peace of any county, stewartry, city, borough, town, or place, who shall, by information upon oath, have reason to suspect that any house, room, field, or place, or any parts or part thereof, are or is opened or used for the purpose of delivering lectures or discourses, or for public debate, or for the purpose of reading books, pamphlets, newspapers, or other publications, contrary to the provisions of this act, to go to such house, room, field, or place, and demand to be admitted therein; and in case such

justice or justices shall be refused admittance to such house, room, field, or place, or any part thereof, the same shall be deemed a disorderly house or place, within the intent and meaning of this act, and of the said recited act of the 30th year aforesaid [chap. 8, *ante*, 750, *n.*]; and all and every the provisions hereinbefore, and in the said recited act contained, respecting any house, room, field, or place, therein or hereinbefore declared to be a disorderly house or place, shall be applied to such house, room, field, or place, where such admittance shall have been refused as aforesaid; and every person refusing such admittance shall forfeit the sum of 20*l.*"

8. *Seditious Meetings, &c.*

30 Geo. III. c. 79.

fusing shall forfeit 20*l.*

Sect. 18. "It shall be lawful for two or more justices of the peace for the county, stewartry, city, borough, town, or place, where any house, room, or other building, shall be intended to be opened for any of the purposes aforesaid, by writing under their hands and seals, at their general sessions of the peace, or at any special session to be held for the particular purpose, to grant a licence to any person or persons desiring the same, to open such house, room, or other building, for the purpose of delivering for money any such lectures or discourses as aforesaid, on any subjects, the same being clearly expressed in such licence, or for the purpose of reading books, pamphlets, newspapers, or other publications; for which licence a fee of 1*s.*, and no more, shall be paid, and the same shall be in force for the space of one year, and no longer, or for any less space of time, therein to be specified; and which licence it shall be lawful for the justices of the peace of the same county, stewartry, city, borough, town, or place, at any general sessions of the peace, to revoke and declare void, and no longer in force, by any order of such justices; a copy whereof shall be delivered to or served upon the person to whom the said licence so revoked shall have been granted, or shall be left at the house, room, or building, for which such licence shall have been granted; and thereupon such licence shall cease and determine, and be thenceforth utterly void and of no effect."

Two justices in session may grant licences for lecturing or reading, which may be revoked at any general session.

Sect. 19. "It shall be lawful for any justice or justices of the peace of any county, stewartry, city, borough, town, or place, where any such house, room, or other building shall be licensed, as herein provided, to go to such house, room, or building, so licensed, at the time of delivering any such lecture or discourse therein as aforesaid, or at the time appointed for delivering any such lecture or discourse, or whilst such house, room, or building shall be opened or used, or during the time appointed for using the same as a place for reading books, pamphlets, newspapers, or other publications as aforesaid, and demand to be admitted therein; and in case such justice or justices shall be refused admittance to such house, room, or building, the same shall be deemed, notwithstanding any such licence as aforesaid, a disorderly house or place within the meaning of this act; and all and every the provisions hereinbefore contained, respecting any house, room, field, or place, hereinbefore declared to be a disorderly house or place, shall be applied to such house, room, or building so licensed as aforesaid, where such admittance shall have been refused as aforesaid; and every person refusing such admittance shall forfeit the sum of 20*l.*"

A justice may demand admittance to any licensed place, and if refused, it shall be deemed disorderly, and the person so refusing shall forfeit 20*l.*

Sect. 20. "It shall be lawful for any two justices of the peace acting for any county, stewartry, riding, division, city, town, or place, upon evidence, on oath, that any house, room, or place, so licensed and opened as aforesaid, is commonly used for the purpose of delivering there lectures or discourses of a seditious or immoral tendency, or that books, pamphlets, newspapers, or other publications of a seditious or immoral nature, are there commonly kept and delivered to be read, to adjudge and declare the licence for opening the same to have been forfeited; and such licence shall thereupon cease and determine, and shall thenceforth be utterly void and of no effect."

Any two justices on evidence on oath that any licensed place is used for lectures of a seditious or immoral tendency, &c., may declare the licence forfeited.

Sect. 21. "Every house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, shall also be deemed a house or place licensed for the purpose of reading books, pamphlets, and other publica-

Every alehouse, &c., to be deemed licensed for reading; but two jus-

8. *Seditious Meetings, &c.*

39 Geo. III. c. 79. tices, on evidence on oath that seditious or immoral publications are read, may declare the licence forfeited.

tions, within the intent and meaning of this act; but nevertheless it shall be lawful to and for any two or more justices of the peace for the county, stewartry, riding, division, city, borough, town, or place, where such house, room, or place shall be, upon evidence on oath that books, pamphlets, or other publications of a seditious or immoral nature are usually distributed, for the purpose of being read at such house, room, or place, to adjudge and declare the licence or licences for selling ale, beer, wine, or spirituous liquors, under the authority whereof such house, room, or place shall be used for the purpose of selling ale, beer, wine, or spirituous liquors, to have been forfeited, [Form, No. 13, *post*,] and the person or persons so keeping such house, room, or place, shall, from and after the day of the date of such adjudication and declaration, be subject and liable to all and every the penalties and forfeitures which such person or persons would be subject and liable to, if such licence or licences had expired, or otherwise determined, on that day, for any act done after that day." (*See* "*Alehouse*," Vol. I.)

Not to extend to lectures delivered in the universities, or the hall of any of the inns of court, &c., or by the professors in Gresham College.

Payments to schoolmasters not deemed payments for admission to lectures.

Sect. 22. "Nothing in this act contained shall extend or be construed to extend to any lecture or discourses to be delivered in any of the universities of these kingdoms, by any member thereof, or any person authorized by the chancellor, vice-chancellor, or other proper officers of such universities respectively, or to any lecture or discourse to be delivered in the public hall of any of the inns of court or chancery, by any person authorized by the benchers of the inns of court, or by the professors in Gresham College; and that no payment made to any schoolmaster, or other person by law allowed to teach and instruct youth, in respect of any lectures or discourses delivered by such schoolmaster, or other person, for the instruction only of such youth as shall be committed to his instruction, shall be deemed a payment of money for admission to such lectures or discourses, within the intent and meaning of this act."

Sect. 23 to 33 inclusive relate to offences by printers and letter founders, and will be found *ante*, 647, 649.

Prosecutions to be commenced within three months after penalty is incurred.

Sect. 34. "No person shall be prosecuted or sued for any penalty imposed by this act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred."

Recovery of penalties. (*a*)

Sect. 35. "Any pecuniary penalty imposed by this act, exceeding the sum of 20*l.*, may be sued for and recovered, by any person who will sue for the same, by action of debt, in any of his majesty's courts of record at Westminster, if such penalty shall have been incurred in England or Wales, or the town of Berwick-upon-Tweed, and in his majesty's court of Exchequer in Scotland, if such penalty shall have been incurred in Scotland; in which action it shall be sufficient to declare or allege that the defendant is indebted to the plaintiff in the sum of 20*l.* (being the sum demanded by such action), being forfeited by an act made and passed in the 39th year of the reign of his majesty king George the Third, intituled 'An Act' [here set forth the title of the act], and the plaintiff, if he shall recover in any such action, shall have his full costs; and any pecuniary penalty imposed by this act, and not exceeding the sum of 20*l.*, and for the recovery whereof no provision is hereinbefore contained, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way; and in case such last-mentioned penalty shall not be forthwith paid, such justice or justices shall, by warrant under his or their hand and seal, or hands and seals, and directed to any constable or other peace-officer, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale; and in case no sufficient dis-

(*a*) See the cases, *ante*, p. 650, *n.*

tress can be had or made, such justice or justices shall commit the offender to the common gaol or house of correction for such county, stewartry, riding, division, city, borough, town, or place, there to remain, without bail or mainprize, for any time not exceeding six calendar months, nor less than three calendar months."

8. *Seditious Meetings, &c.*

39 Geo. III. c. 79.

Sect. 36. "All pecuniary penalties and forfeitures imposed by this act shall, when recovered, either by action in any court, or in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned; (that is to say,) one moiety thereof to the plaintiff in any such action, or the informer before any justice, and the other moiety thereof to his majesty, his heirs, and successors."

Application of penalties.

Sect. 37. "Every action and suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, for any thing done or acted in pursuance of this act, shall be commenced within three calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs; which he or they shall and may recover in such and the same manner as any defendant can by law in other cases." [See now as to double costs, 5 & 6 Vict. c. 97, s. 3.]

Limitation of actions.

General issue.

Venue.

Double costs.

Sect. 38. "That convictions by any justice or justices of the peace, for offences against this act, and adjudications of forfeitures of licences to be made in pursuance of this act, and notices and certificates delivered and granted in pursuance of this act, shall or may be in the several forms [Forms Nos. 13, 14, 15, *post*,] set forth for such purposes respectively in the schedule to this act annexed."

Convictions, &c., to be in the forms in the annexed schedule (Nos. 1, 2, 3.)

By the 57 Geo. III. c. 19, s. 23 (*a*), reciting, that "it is highly inexpedient that public meetings or assemblies should be held near the houses of parliament, or near his majesty's courts of justice in Westminster Hall, on such days as are hereinafter mentioned," it is enacted, "That it shall not be lawful for any person or persons to convene or call together, or to give any notice for convening or calling together, any meeting of persons consisting of more that fifty persons, or for any number of persons exceeding fifty, to meet in any street, square, or open place, in the city or liberties of Westminster, or county of Middlesex, within the distance of one mile from the gate of Westminster Hall, save and except such parts of the parish of St. Paul's Covent Garden as are within the said distance, for the purpose or on the pretext of considering of or preparing any petition, complaint, remonstrance, declaration, or other address, to the king, or to his royal highness the prince regent, or to both houses or either house of parliament, for alteration of matters in church or state, on any day on which the two houses or either house of parliament shall meet and sit, or shall be summoned, or adjourned, or prorogued to meet or sit, nor on any day on which his majesty's courts of Chancery, King's Bench, Common Pleas, and Exchequer, or any of them, or any judge of any of them, shall

Public meetings not to be held on certain days within a mile of Westminster Hall.

(*a*) By sect. 22, the clauses and provisions of the act thereinbefore contained, relating to assemblies of persons for the purpose or under the pretext of deliberating on public grievances, and of agreeing on petitions and addresses to the throne, or to the houses of parliament, were to continue in force until the 24th of July, 1818. They seem now expired.

8. *Seditious Meetings, &c.*

57 Geo. III. c. 19.

sit in Westminster Hall, any thing hereinbefore contained to the contrary notwithstanding; and that if any meeting or assembly, for the purposes or on the pretexts aforesaid, of any persons, shall be assembled or holden on any such day, contrary to the intent and meaning of this enactment, such meeting or assembly shall be deemed and taken to be an unlawful assembly, by whomsoever, or in consequence of what notice soever, such meeting or assembly shall have been holden: Provided that nothing in this enactment contained shall, by any construction whatever, be deemed or taken to apply to or affect any meeting convened, called, or holden for the election of members of parliament, or any persons attending such meeting, or to any persons attending upon the business of either house of parliament, or any of the said courts."

Proviso for meetings convened for election of members of parliament.

Spencean societies or clubs, &c., suppressed and prohibited.

Sect. 24 After reciting, that "divers societies or clubs have been instituted in the metropolis, and in various parts of this kingdom, of a dangerous nature and tendency, inconsistent with the public tranquillity, and the existence of the established government, laws, and constitution of the kingdom, and the members of many of such societies or clubs have taken unlawful oaths and engagements of fidelity and secrecy, and have taken or subscribed, or assented to, illegal tests and declarations; and many of the said societies or clubs elect, appoint, or employ committees, delegates, representatives, or missionaries, of such societies or clubs, to meet, confer, communicate, or correspond, with other societies or clubs, or with delegates, representatives, or missionaries of such other societies or clubs, and to induce and persuade other persons to become members thereof, and, by such means, maintain an influence over large bodies of men, and delude many ignorant and unwary persons into the commission of acts highly criminal; and whereas certain societies or clubs, calling themselves 'Spenceans,' or 'Spencean Philanthropists,' hold and profess for their object the confiscation and division of the land, and the extinction of the funded property of the kingdom: And whereas it is expedient and necessary that all such societies and clubs, as aforesaid, should be utterly suppressed and prohibited, as unlawful combinations and confederacies, highly dangerous to the peace and tranquillity of this kingdom, and to the constitution of the government thereof, as by law established;" enacts, "That from and after the passing of this act, all societies or clubs calling themselves 'Spenceans' or 'Spencean Philanthropists,' and all other societies or clubs, by whatever name or description the same are called or known, who hold and profess, or who shall hold and profess, the same objects and doctrines, shall be, and the same are hereby utterly suppressed and prohibited, as being unlawful combinations and confederacies against the government of our sovereign lord the king, and against the peace and security of his majesty's liege subjects."

Societies taking unlawful oaths,

or requiring &c., tests or declarations not required by law, or electing committees, delegates, &c., deemed guilty of unlawful combinations within 39 Geo. III. c. 79.

Sect. 25. "From and after the passing of this act, all and every the said societies or clubs, and also all and every other society or club, now established or hereafter to be established, the members whereof shall be required or admitted to take any oath or engagement which shall be an unlawful engagement within the meaning of the 37 Geo. III. c. 123, *ante*, 265, or within the meaning of the 52 Geo. III. c. 104, *ante*, 267, or to take any oath not required or authorized by law; and every society or club, the members whereof, or any of them, shall take or in any manner bind themselves by any such oath or engagement, on becoming, or in order to become, or in consequence of being, a member or members of such society or club; and every society or club, the members or any member whereof shall be required or admitted to take, subscribe, or assent to, or shall take, subscribe, or assent to, any test or declaration not required or authorized by law, in whatever manner or form such taking or assenting shall be performed, whether by words, signs, or otherwise, either on becoming, or in order to become, or in consequence of being, a member or members of any such society or club; and every society or club that shall elect, appoint, nominate, or employ, any committee, delegate or delegates, representative or representatives, missionary or missionaries, to meet, confer,

or communicate with any other society or club, or with any committee, delegate or delegates, representative or representatives, missionary or missionaries, of such other society or club, or to induce or persuade any person or persons to become members thereof; shall be deemed and taken to be unlawful combinations and confederacies, within the meaning of an act passed in the thirty-ninth year of the reign of his present majesty, intituled, 'An Act for the more effectual Suppression of Societies established for Seditious and Treasonable Purposes, and for better preventing Treasonable and Seditious Practices,' and shall and may be prosecuted, proceeded against, and punished, according to the provisions of the said act; and every person who, from and after the passing of this act, shall become a member of any such society or club, or who, after the passing of this act, shall act as a member thereof, and every person who, from and after the passing of this act, shall directly or indirectly maintain correspondence or intercourse with any such society or club, or with any committee or delegate, representative or missionary, or with any officer or member thereof, as such, or who shall, by contribution of money or otherwise, aid, abet, or support such society or club, or any members or officers thereof, as such, shall be deemed guilty of an unlawful combination and confederacy within the intent and meaning of the 39 Geo. III. c. 79, *ante*, 746, and shall and may be proceeded against, prosecuted, and punished, according to the provisions of the said act, with regard to the prosecution and punishment of unlawful combinations and confederacies." (*See R.* v. *Dixon*, 6 *C. & P.* 596.)

8. *Seditious Meetings, &c.*

57 Geo. III. c. 19.

Persons becoming members of such societies, &c.

deemed guilty of unlawful combinations within 39 Geo. III. c. 79, and proceeded against accordingly.

Sect. 26. "Nothing in this act contained shall extend, or be construed to extend, to any society or societies holden under the denomination of lodges of Freemasons, in conformity to the rules prevailing in such societies of Freemasons, provided such lodges shall comply with the rules and regulations contained in the said act of the thirty-ninth year of his present majesty, relating to such lodges of Freemasons; nor to any declaration to be taken, subscribed, or assented to by the members of any society, the form of which declaration shall have been first approved and subscribed by two or more justices of the peace, and confirmed by the major part of the justices present at a general session, or at a general quarter sessions of the peace, pursuant to the rules and regulations contained in the said act of the thirty-ninth year of his present majesty; nor shall extend or be construed to extend to any meeting or society of the people commonly called Quakers, or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business whatsoever shall be treated of or discussed."

Proviso for Freemasons' lodges, and for declarations approved by two justices, pursuant to 39 Geo. III. c. 79, and for meetings or societies of Quakers, or for charitable purposes.

Sect. 27. "And whereas in the said act of the thirty-ninth year of the reign of his present majesty, it is amongst other things enacted, 'that every society which shall be composed of different divisions or branches, or of different persons acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate, or other officer elected or appointed by or for such part, or to act as an officer for such part, shall be deemed and taken to be unlawful combinations and confederacies [*ante*, 747];'" it is enacted, "That the said enactment shall not extend or be construed to extend to any meeting or society of the people commonly called Quakers, or to any meeting or society formed or assembled for purposes of a religious or charitable nature only, and in which no other matter or business whatsoever shall be treated of or discussed."

39 Geo. III. c. 79 s. 2, not to extend to Quakers' meetings, &c.

Sect. 28. "If any person shall knowingly permit any meeting of any society or club hereby declared to be an unlawful combination or confederacy, or of any division, branch, or committee of such society or club, to be held in any house or apartment, building, or other place to him or her belonging, or in his or her possession or occupation, such person shall, for the first offence, forfeit the sum of 5*l.*, and shall for any such offence, committed after the date of his or her conviction for such first offence, be deemed guilty of an unlawful combination and confederacy, in breach of this act."

Persons not to permit unlawful assemblies in their houses, &c.

Combination.

8. *Seditious Meetings, &c.*

57 Geo III. c. 19.

Licences of public houses where unlawful clubs are held to be forfeited,

and penalty.

Sect. 29. "It shall be lawful for any two or more justices of the peace, acting for any county, stewartry, riding, division, city, town, or place, upon evidence on oath that any meeting of any society or club hereby declared to be an unlawful combination and confederacy, or any meeting for any seditious purpose, hath been held, after the passing of this act, at any house, room, or place, licensed for the sale of ale, beer, wine, or spirituous liquors, with the knowledge and consent of the person keeping such house, room, or place, to adjudge and declare the licence or licences for selling ale, beer, wine, or spirituous liquors, granted to the person or persons keeping such house, room, or place, to be forfeited; and the person or persons so keeping such house, room or place, shall, from and after the day of the date of such adjudication and declaration, and notice thereof given to him, her, or them, be subject and liable to all and every the penalties and forfeitures for any act done after that day, which such person or persons would be subject and liable to, if such licence or licences had expired, or otherwise determined on that day." (*See* 39 Geo. III. c. 79, s. 14, *ante*, 749.)

Penalties exceeding 20*l.* how to be recovered.

Sect. 30. "All or any of the pecuniary fines, penalties or forfeitures, exceeding the sum of 20*l.*, incurred under this act, in England, Wales, or Berwick-upon-Tweed, may be recovered by action of debt in any of his majesty's courts of record at Westminster, and in Scotland in the court of session there; and it shall be sufficient to declare in England or conclude in Scotland, that the defendant or defender is indebted to the plaintiff or pursuer in the sum of (being the sum demanded by the said action), being forfeited by an act made in the fifty-seventh year of the reign of his present majesty, intituled 'An Act for the more effectual preventing Seditious Meetings and Assemblies;' and the plaintiff or pursuer, if he shall recover in such action, shall have his full costs or expences; and any pecuniary penalty imposed by this act not exceeding the sum of 20*l.*, and for the recovery whereof no provision is hereinbefore contained, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way; and in case such last-mentioned penalty shall not be forthwith paid, such justice or justices shall, by warrant under his or their hand and seal or hands and seals, and directed to any constable or other peace officer, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale; and in case no sufficient distress can be had or made, such justice or justices shall commit the offender to the common gaol or house of correction for such county, stewartry, riding, division, city, borough, town, or place, there to remain without bail or mainprize, for any time not exceeding six calendar months, nor less than three calendar months: Provided always, that no person shall be prosecuted or sued for any pecuniary penalty imposed by this act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred."

Penalties not exceeding 20*l.* how to be recovered.

Distress.

Limitation of prosecution for felony.

Application for penalties.

Sect. 31. "All pecuniary penalties and forfeitures imposed by this act shall, when recovered, either by action in any court, or in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned; (that is to say,) one moiety thereof to the plaintiff in any such action, or to the informer before any justice, and the other moiety thereof to his majesty, his heirs and successors."

Limitation of actions.

Sect. 32. "Any action and suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, in England, Wales, or the town of Berwick-upon-Tweed, for anything done or acted in pursuance of this act, shall be commenced within three calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead

the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs; which he or they shall and may recover in such and the same manner as any defendant can by law in other cases." [But this provision as to double costs is materially altered by the 5 & 6 Vict. c. 97, s. 3, by which the defendant will only get a full indemnity against costs.]

8. *Seditious Meetings, &c.*

57 Geo. III. c. 19.

General issue may be pleaded.

Double costs.

Sect. 33. "Every action and suit which shall be brought or commenced against any person or persons in Scotland, for any thing done or acted in pursuance of this act, shall in like manner be commenced within three calendar months after the fact committed, and not afterwards, and shall be brought in the court of session in Scotland; and the defender or defenders may plead that the matter complained of was done in pursuance of this act, and may give this act and the special matter in evidence; and if such action or suit shall be brought or commenced after the time limited for bringing the same, then the same shall be dismissed; and in such case, or if the defender or defenders shall be assoilzied, or the pursuer or pursuers shall suffer the action or suit to fall asleep, or a decision shall be pronounced against the pursuer or pursuers upon the relevancy, the defender or defenders shall have treble costs or expences; which he or they shall and may recover in such and the same manner as any defender can by law recover costs or expences in other cases." [*See* the 5 & 6 Vict. c. 97, s. 3, *supra*.]

Limitation of actions, &c., in Scotland.

Plea.

Treble costs.

Sect. 34. "Convictions by any justice or justices of the peace for offences against this act, and adjudications of forfeitures of licences to be made in pursuance of this act, shall or may be in the several forms set forth for such purposes respectively in the schedule to this act annexed, or in words to that effect." [*See* Form, No. 18, *post*.]

Form of conviction.

Sect. 35. "Nothing in this act contained shall be deemed to take away or abridge any provision already made by the law of this realm, or of any part thereof, for the suppression or punishment of any offence whatsoever described in this act."

Act not to affect other provisions made by law.

Sect. 36. "No person shall be prosecuted under this act, for having been, before the passing of this act, a member of any society or club declared hereby to be an unlawful combination and confederacy, if such person shall not in any manner have acted as a member of such society or club after the passing of this act; but that nothing in this act contained shall extend to prevent any prosecution, by indictment or otherwise, for any thing which shall be an offence within the intent and meaning of this act, and which might have been so prosecuted if this act had not been made: Provided always, that no person who shall be prosecuted and convicted or acquitted of any offence against this act shall be subject or liable to be again prosecuted for the same offence: Provided always, that nothing herein contained shall extend to discharge any person in custody at the time of passing this act, or who having been in custody shall have been discharged on bail or recognizance, from any prosecution which might have been had against such person if this act had not been made."

Proviso for persons having been members of any club previous to the passing of this act, &c.

No double prosecution.

Persons already in custody, &c. not discharged.

Sect. 37. "In case any proceeding or prosecution shall be instituted, commenced, or prosecuted for any offence committed against the said act of the thirty-ninth year of his present majesty, or against this act, either by action, or by information before any justice or justices, or otherwise, it shall and may be lawful for his majesty's attorney-general for the time being, as to any such action, information, or other proceeding in England, or for the lord advocate of Scotland as to any such action, information, or other proceeding in Scotland, to order any such action, information, or other proceeding to be stayed; and in case of any judgment or convic-

Power of the attorney-general and lord advocate and secretary of state to stay proceedings.

8. *Seditious Meetings, &c.*

57 Geo. III. c. 19.

tion upon any such action, information, or proceeding, it shall and may be lawful for any one of his majesty's principal secretaries of state, by any order made for that purpose under his hand, to stay the execution of such judgment or conviction, or to mitigate or remit any fine or forfeiture, or any part thereof."

Act not to extend to Ireland.

Sect. 39. This act is not to extend to Ireland.

Disorderly houses.

As to disorderly houses *see* "*Disorderly House*," Vol II.

Tumultuous petitions.

As to tumultuous petitions to parliament, *see ante*, 530.

IX. Training to Arms.

60 Geo. III. c. 1.

By the 60 Geo. III. c. 1, intituled "An Act to prevent the training of Persons to the Use of Arms, and to the Practice of Military Evolutions and Exercise," [11th December, 1819,] sect. 1, after reciting, that, "in some parts of the United Kingdom, men clandestinely and unlawfully assembled have practised military training and exercise, to the great terror and alarm of his majesty's peaceable and loyal subjects, and the imminent danger of the public peace;" it is enacted, "That all meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercise, movements, or evolutions, without any lawful authority from his majesty, or the lieutenant or two justices of the peace of any county or riding, or of any stewartry, by commission or otherwise, for so doing, shall be, and the same are hereby prohibited, as dangerous to the peace and security of his majesty's liege subjects and of his government; and every person who shall be present at or attend any such meeting or assembly, for the purpose of training and drilling any other person or persons to the use of arms or the practice of military exercise, movements or evolutions, or who shall train or drill any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall aid or assist therein, being legally convicted thereof, shall be liable to be transported for any term not exceeding seven years, or to be punished by imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had; and every person who shall attend or be present at any such meeting or assembly as aforesaid, for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had."

Meetings and assemblies of persons for the purposes of being trained, or of practising military exercises, or aiding therein, prohibited.

Punishment.

Persons so assembled may be dispersed, or detained and required to give bail, and prosecuted.

Sect. 2. "It shall be lawful for any justice of the peace, or for any constable or peace officer, or for any other person acting in their aid or assistance, to disperse any such unlawful meeting or assembly as aforesaid; and to arrest and detain any person present at, or aiding, assisting, or abetting any such assembling or meeting as aforesaid; and it shall be lawful for the justice of the peace who shall arrest any such person, or before whom any person so arrested shall be brought, to commit such person for trial for such offence, under the provisions of this act, unless such person can and shall give sufficient bail for his appearance at the next assizes or general or quarter sessions of the peace, to answer to any indictment which may be preferred against him for any such offence against this act, in England and Ireland; and in Scotland every such person shall be arrested and dealt with according to the law and practice of that part of the United Kingdom in the case of a bailable offence."

Scotland.

Sheriffs depute, &c., in Scotland, to have the same

Sect. 3. "The sheriffs depute and their substitutes, stewards depute and their substitutes, justices of the peace, magistrates of royal burghs, and all other inferior judges and magistrates, and also all high and petty

constables, or other peace officers of any county, stewartry, city, or town, within that part of the United Kingdom called Scotland, shall have such and the same powers and authorities for putting this present act in execution within Scotland, as the justices of the peace and other magistrates and peace officers and constables aforesaid respectively have, by virtue of this act, within and for other parts of the United Kingdom."

9. *Training to Arms.*

60 Geo. III. c. 1.

powers as magistrates, &c., in England.

Sect. 4. "Nothing in this act contained shall extend to prevent any prosecution, by indictment or otherwise, for any thing which shall be an offence within the intent and meaning of this act, and which might have been so prosecuted if this act had not been made, unless the offender shall have been prosecuted for such offence under this act, and convicted or acquitted of such offence."

Offenders may be prosecuted as if this act had not been made.

Sect. 5. "Any action or suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, in that part of Great Britain called England, or in Ireland, for any thing done or acted in pursuance of this act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their actions after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases."

Limitation of actions.

General issue may be pleaded.

Venue.

Double costs.

Sect. 6. "Every action or suit which shall be brought or commenced against any person or persons in Scotland, for any thing done or acted in pursuance of this act, shall in like manner be commenced within six calendar months after the fact committed, and not afterwards, and shall be brought in the court of session in Scotland, and the defender or defenders may plead that the matter complained of was done in pursuance of this act, and may give this act and the special matter in evidence; and if such action or suit shall be brought or commenced after the time limited for bringing the same, then the same shall be dismissed; and in such case, or if the defender or defenders shall be assoilzied, or the pursuers shall suffer the action or suit to fall asleep, or a decision shall be pronounced against the pursuer or pursuers upon the relevancy, the defender or defenders shall have treble costs or expenses, which he or they shall and may receive * in such and the same manner as any defender can by law recover costs or expences in other cases." These enactments as to double and treble costs are materially altered by the 5 & 6 Vict. c. 97, s. 3, by which the defendant will be entitled only to a full indemnity against costs.

Limitation of actions, &c., in Scotland.

Plea.

Treble costs.

* *Sic.*

Sect. 7. "That no person shall be prosecuted by virtue of this act for any thing done or committed contrary to the provisions hereinbefore contained, unless such prosecution shall be commenced within six calendar months after the offence committed."

Limitation of prosecutions.

As to what evidence is admissible to show the intent of persons meeting together in large assemblies, marching in military order, &c., *see R.* v. *Hunt and others*, 3 *B. & Ald.* 566; *Bedford* v. *Birley*, 3 *Stark. Ev.* 1510.

Evidence.

X. Forms.

(i.) Commitment for a riot.

Commencement as usual, *ante*, p. 11.] *on the day of , A. D. , at the parish of , in the said county, with force and arms,*

10. *Forms.*

at, &c., together with divers others evil disposed persons, unlawfully, riotously, and routously, did assemble and gather together, to disturb the peace, and did then and there unlawfully, riotously, and routously, make a great noise, riot, and disturbance; and assault and beat one A. B., [according to the fact,] *to the great disturbance and terror of the Queen's subjects, and against the Queen's peace. And you, the said keeper, &c.* [Conclude as usual, *ante*, p. 11.]

(2.) Indictment for a riot.

—— — to wit. The jurors for our lady the Queen upon their oath present, that A. O., late of , [farmer,] B.O., late of the same place, [yeoman,] C. O., late of the same place, [labourer,] and divers other persons to the number of and more, to the jurors aforesaid as yet unknown, on the day of , in the year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously did assemble and gather together, to disturb the peace of our said lady the Queen, and then and there being so assembled and gathered together, did then and there make a great noise, riot, tumult, and disturbance, and then and there unlawfully, riotously, routously, and tumultuously remained and continued together, making such noise, riot, tumult, and disturbance, for a long space of time, to wit, for the space of hours and more then next following, to the great terror and disturbance not only of the liege subjects of our said lady the Queen there and thereabouts inhabiting, residing, and being, but of all the other liege subjects of our said lady the Queen there passing and re-passing in and along the public streets, and Queen's common highways there, in contempt of our said lady the Queen and her laws, and against the peace of our said lady the Queen, her crown, and dignity.*

(3.) Indictment for a riot and assault.

[As in the preceding form to the *, and then allege,] *and the said A. O., B. O., and C. O., then and there in and upon one A. B., then and there being, unlawfully, riotously, and routously did make an assault, and him the said A. B. then and there unlawfully, riotously, and routously did beat, wound, and ill treat, and other wrongs to the said A. B. then and there unlawfully, riotously, and routously did, to the great damage of the said A. B., and against the peace of our lady the Queen, her crown, and dignity*

(4.) Indictment upon the riot act.

——— (to wit). The jurors for our lady the Queen upon their oath present, that A. O., late of , [yeoman,] B. O., late of the same place, [farmer,] C. O., late of the same place, [labourer,] and divers other persons to the number of twelve and more, to the jurors aforesaid as yet unknown, on the day of , in the year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, with force and arms, unlawfully, riotously, routously, and tumultuously did assemble and gather together to disturb the peace of our said lady the Queen, and that afterwards, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, J. P., esq., then being one of the justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen, in and for the county of Middlesex, aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the same county, did then and there come as near as he safely could to the said A. O., B. O., C. O., and the said divers other persons to the number of twelve and more, to the jurors aforesaid as yet unknown, being then and there so assembled to the disturbance of the public peace as aforesaid, and with a loud voice he the said J. P. did then and there command and cause to be commanded silence to be while proclamation was making, and the said J. P., after that, did then and there openly, and with a loud voice, make proclamation according to the form of the statute in such case made and provided, in these words following, that is to say, "Our sovereign lady the Queen chargeth and commandeth all persons being assembled, immediately to disperse themselves and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George, for preventing tumults and riotous assemblies.—God save the Queen." And the jurors aforesaid, upon their oath aforesaid, do further present, that the

said A. O., B. O., C. O., and the said divers other persons to the number of twelve and more, to the jurors aforesaid as yet unknown, afterwards, to wit, on the said day of , in the said year of the reign of our said lady the Queen, with force and arms, at the parish aforesaid, in the county aforesaid (notwithstanding the said proclamation was so openly made as aforesaid), did then and there unlawfully, feloniously, riotously, and tumultuously, to the disturbance of the public peace, remain and continue together by the space of one hour, after such command made by the proclamation so as aforesaid, in contempt of our said lady the Queen and her laws, to the great disturbance and terror of the quiet and peaceable subjects of our said lady the Queen, to the evil example of all others, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

10. *Forms:*

(5.) Indictment for inciting to a riot.

And the jurors aforesaid, on their oath aforesaid, further present, that the said J. A., &c., being persons of evil and turbulent dispositions, and maliciously intending and endeavouring to disturb and break the peace of our lady the now Queen, and to annoy and injure the said G. F., and a great number of her majesty's other quiet and peaceable subjects, and unlawfully, wickedly, and maliciously intending, devising, and endeavouring, as much as in them lay, to raise, create, and cause riots and breaches of the peace, near to the said dwelling-house of the said G. F., and the dwelling-houses of divers other liege subjects of our said lady the Queen, situate in the said county of S., and in and near to a certain public highway there, heretofore, to wit, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously incited, stirred up, and, as much as in them lay, endeavoured and laboured to persuade and induce a great number of other liege subjects of our said lady the Queen, whose names to the jurors aforesaid are as yet unknown, with force and arms, unlawfully, riotously, routously, and tumultuously to assemble and gather together, in order to make and commit great noises, riot, tumult, and disturbances, near to and about the said dwelling-houses of the said G. F., and the said other persons, in the said highway, and to terrify, disturb, and injure the said G. F. and his family, and many other of her majesty's liege, peaceable, and quiet subjects, in contempt of our said lady the Queen, in open violation of the laws, good order, and government of this realm, to the evil and pernicious example of all others, and against the peace of our said lady the Queen, her crown, and dignity.

(6.) Commitment for riotously demolishing a house, or machinery, &c. on 7 & 8 Geo. IV. c. 30, s. 8.

Commencement as usual, *ante*, p. 11.] , *on the day of , A. D. , at the parish of , in the said county, with divers other persons, unlawfully, riotously, and tumultuously did assemble together, to the disturbance of the public peace; and, being so unlawfully, riotously, and tumultuously assembled together, as aforesaid, did unlawfully, feloniously, and with force demolish, pull down, and destroy* [or, "*begin to demolish, &c.*"], *the dwelling-house of A. B., there situate,* [as to what property is within the act, see *ante*, p. 737, and describe it accordingly,] *against the form of the statute in that case made and provided. And you, the said keeper, &c.* [As usual, as *ante*, p. 11.]

(7.) Indictment for a like offence.

——— *to wit. The jurors for our lady the Queen upon their oath present, that A. B., late of the parish of , in the county of , [labourer,] C. D., late of the same place, [labourer,] E. F., late of the same place, [labourer,] together with divers other evil-disposed persons, to the number of twelve and more, to the jurors aforesaid unknown, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, riotously, and tumultuously did assemble together, to the disturbance of the public peace; and being so unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, as aforesaid, did then and there feloniously, unlawfully, and with force, demolish, pull down, and destroy the [dwelling-house] of one A. B., there situate, in contempt of our lady the Queen and her laws, to the great disturbance and terror of the quiet and peaceable subjects of this realm, to the evil*

10. *Forms.*

example of all others, against the peace of our said lady the Queen, her crown, and dignity, and against the form of the statute in such case made and provided. [Add other counts as the case may suggest, and one count or more, stating the offence to have been the "*beginning to demolish,*" &c.]

(8.) Record of a riot on view.

County of } Be it remembered, that on the day of , in the year of the reign of Queen Victoria, we, J. P. and K. P., esqs., two of the justices of our said lady the Queen, assigned to keep the peace in the said county, and A. S., knight, sheriff of the said county, at the complaint and request of A. I., of , in the county aforesaid, [yeoman,] in our proper persons, have come to [the mansion-house] of him, the said A. I., in aforesaid, and then and there do find A. O., of , [yeoman,] B. O., of , [yeoman,] C. O., of , [yeoman,] and other malefactors and disturbers of the peace of our said lady the Queen, to us unknown, in a warlike manner arrayed, to wit, with clubs, swords, and guns, unlawfully, riotously, and routously assembled, and the same house besetting, many evils against him, the said A. I., threatening, to the great disturbance of the peace of our said lady the Queen, and terror of his people, and against the form of the statute in that case made and provided. And therefore we, the aforesaid J. P., K. P., and A. S., the aforesaid A. O., B. O., and C. O., do then and there cause to be arrested, and to the next gaol of our said lady the Queen, in the county aforesaid, to be conveyed, by our view and record of the unlawful assembly, riot, and rout aforesaid convicted, there to remain, every and each of them respectively, until they shall severally and respectively have paid to our said lady the Queen the several sums of 10l. each, which we do impose upon them and every of them separately for their said offence. In testimony whereof, to this our present record we do put our seals. Dated at aforesaid, the day and year aforesaid.

(9.) Commitment of the rioters upon view.

County of } J. P. and K. P., esqs two of the justices of our lady the Queen, assigned to keep the peace within the said county, and A. S., knight, sheriff of the said county, to the keeper of the gaol of our said lady the Queen, at , in the said county, and to his deputy and deputies there, and to every of them, greeting. Whereas, upon complaint made unto us by A. I., of , [yeoman,] we did, this present day of , go to the house of the said A. I. at aforesaid, and there did see A. O., of , [yeoman,] B. O., of , [yeoman,] C. O., of , [yeoman,] and other malefactors to us unknown, assembled together in an unlawful, routous, and riotous manner, to the terror of the people, and against the peace of our said lady the Queen, and against the form of the statute in that case made and provided. We do therefore send you by the bringers hereof the bodies of the said A. O., B. O., and C. O., convicted of the said riot, rout, and unlawful assembly, by our own view, testimony, and record; commanding you, in the name of our said lady the Queen, to receive them into the said gaol, and them and every of them respectively there safely to keep, until they and every of them shall respectively pay to our said lady the Queen the several and respective sums of 10l. each, which we have set and imposed upon them, and each and every of them separately, for the said offence. Given under our hands and seals, at aforesaid, in the county aforesaid, the day of , A. D.

(10.) Precept to summon a jury.

County of } J. P. and K. P., esqs., two of the justices of our lady the Queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, to the sheriff of the said county, greeting. On the behalf of our said lady the Queen, we command you that you cause to come before us, at , in the county aforesaid, on the day of next ensuing, twenty-four honest and lawful men of the county aforesaid, every one of which to have lands and tenements within the said county to the yearly value of 20s. of charter land, or of freehold, or 26s. 8d. of copyhold, or both, over and above all charges, to inquire for our said lady the Queen and for our said lady the

this behalf, upon their oath, of certain riots, routs, and unlawful assemblies, at , in the county aforesaid, lately committed, as it is said; and that you return upon every person so by you to be impanelled 20s. of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premises at the same time and place. And this you shall in nowise omit, on pain of 20l. Given under our hands and seals, at aforesaid, in the county aforesaid, the day of , A. D. 10. *Forms.*

You shall true inquiry and presentment make of all such things as shall come before you concerning a riot, rout, and unlawful assembly, said to have been lately committed at , in this county: you shall spare no one for favour or affection, nor grieve any one for hatred or ill will; but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you. So help you God. (11.) Juror's oath.

The oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts. So help you God.

County of } An inquisition for our lady the Queen, indented and taken at , in the county aforesaid, the day of , in the year of the reign of , by the oath of honest and lawful men of the county aforesaid, before J. P. and K. P., esqs., justices of our said lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, who say upon their oath aforesaid, that A. O., of , [yeoman,] B. O., of , [yeoman,] C. O., of , [yeoman,] together with other malefactors and disturbers of the peace of our said lady the Queen, to the jurors aforesaid as yet unknown, on the day of now last past, at aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords, and guns, unlawfully, routously, and riotously did assemble, to disturb the peace of our said lady the Queen: and so, being then and there assembled and gathered together, the [mansion-house] of A. I. [yeoman], at aforesaid, unlawfully, routously, and riotously did enter, and in and upon him, the said A. I., then and there unlawfully, routously, and riotously did make an assault, and him, the said A. I., then and there unlawfully, routously, and riotously did beat, wound, and ill treat, in disturbance of the peace of our said lady the Queen, and to the terror of his people, and against the form of the statute in such case made and provided. (12.) The inquisition, indictment, or presentment of the jury.

We, whose names are hereunto set, the above-said jurors, do find this inquisition true.

A. B.
C. D.
&c.

We, the justices abovesaid, do hereby impose the fines here underwritten on the aforesaid offenders.

A. O. 20l.
B. O. 20l.
C. O. 20l.

——— } Be it remembered, that on this day of , in the
to wit. } year of the reign of her present majesty, A. O., of , being a person licensed to sell [as the case may be], is duly convicted before us, two of her majesty's justices of the peace for the county of , in pursuance of an act of the thirty-ninth year of the reign of King George the Third, intitled [set forth the title of the act] (b), for that he the said A. O., of , at , did permit a meeting of a society [describing the society], which is an unlawful combination and confederacy within the intent and meaning of the said act, to be held at , being the house [as the case may be] of the (13.) Adjudication of forfeiture of licence to sell ale, &c., by the 39 Geo. III. c. 79 (a).

(a) The act gives this form. *See* "*Alehouse*," Vol. I.

(b) "An Act for the more effectual Suppression of Societies established for Seditious and Treasonable Purposes; and for better preventing Treasonable and Seditious Practices."

10. *Forms.* *said A. O., wherein he, the said A. O., is licensed to sell* [as the case may be]. *Wherefore we, the said , do adjudge and declare that the licence* [or, *licences*, as the case may be] *is* [or, *are*] *for such offence forfeited. Given under our hands and seals, this day of , in the year of our Lord , and in the year of the reign of her majesty Queen Victoria.*

(14.) Conviction of an unlawful combination and confederacy, by the 39 Geo. III. c. 79 (a).

——— } *Be it remembered, that on this day of , in the*
to wit. } *year of the reign of Queen Victoria, A. O., of , is duly convicted before me,* [or, *us*], *of her majesty's justices of the peace for , in pursuance of an act of the thirty-ninth year of the reign of King George the Third* [set forth the title of the act], *for that the said A. O., after the passing of the said act, to wit, on the day of , did, contrary to the said act, become a member of* [or, as the case may be, "*act as a member of, or maintain correspondence or intercourse with, or, by contribution of money or otherwise, abet or support*"] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said act. Wherefore I* [or, *we*] *the said , do adjudge that he, the said A. O., do pay* [or, *be imprisoned*] *as a penalty for his offence, in pursuance of the said act. Given under my hand and seal* [or, *our hands and seals*], *this day of , in the year of our Lord , and in the year of the reign of her majesty Queen Victoria.*

(15.) General form of a conviction by the 39 Geo. III. c. 79.

——— } *Be it remembered, that on this day of , in the*
to wit. } *year of the reign of Queen Victoria, A. O., of , is duly convicted before me* [o., *us*], *of her majesty's justices of the peace for , in pursuance of an act of the thirty-ninth year of the reign of King George the Third* [set forth the title of the act] (b), *for that the said A. O., on the day of , at , did, contrary to the said act* [as the case may be, specifying any offence against the act, and the time and place when and where the same was committed]. *Wherefore I* [or, *we*], *the said , do adjudge that he, the said A. O., do pay the sum of , as a penalty for his offence, in pursuance of the said act. Given under our hands and seals, this day of , in the year of our Lord , and in the year of the reign of her majesty Queen Victoria.*

(16.) Conviction of an unlawful combination and confederacy, by by the 57 Geo. III. c. 19 (a).

——— } *Be it remembered, that on this day of , in the*
to wit. } *year of the reign of , A. B., of , is duly convicted before me* [or, *us*], *of her majesty's justices of the peace for , in pursuance of an act of the fifty-seventh year of the reign of King George the Third* [set forth the title of the act], *for that the said A. B., after the passing of the said act, to wit, on the day of , at , did, contrary to the said act, become a member of* [or, as the case may be, "*act as a member of, or maintain a correspondence or intercourse with, or, by contribution of money or otherwise, abet or support*"] *a society* [describing the society], *which society is an unlawful combination and confederacy within the intent and meaning of the said act. Wherefore I* [or, *we*], *the said , do adjudge, that he, the said A. B., do pay* [or, *be imprisoned*] *as a penalty for his offence in pursuance of the said act. Given under my hand and seal* [or, *our hands and seals*], *this day of , in the year of our Lord , and in the year of the reign of her majesty Queen Victoria.*

(17.) Adjudication of forfeiture of licence to sell ale, &c., by the 57 Geo. III. c. 19 (a).

——— } *Be it remembered, that on this day of , in the*
to wit. } *year of the reign of her present majesty, A. B. of , being a person licensed to sell* [as the case may be], *is duly convicted before us, two of her majesty's justices of the peace for the county of , in pursu-*

(a) The act gives this form. (b) See note (b) in preceding page.

ance of an act of the fifty-seventh year of the reign of King George the Third [set forth the title of the act], *for that he the said A. B., on , at , did permit a meeting of a society* [describe the society], *which is an unlawful combination and confederacy within the intent and meaning of the said act, to be held at , being the house* [as the case may be] *of the said A. B., wherein he, the said A. B., is licensed to sell* [as the case may be]. *Wherefore we, the said , do adjudge and declare, that the licence* [or, *licences*, as the case may be], *is* [or, *are*] *for such offence forfeited. Given under our hands and seals, this day of , in the year of our Lord , and in the year of the reign of her majesty Queen Victoria.* 10. *Forms.*

Be it remembered, that on this day of , in the year of the reign of , A. B. of , is duly convicted before me [or *us*], *of his majesty's justices of the peace for , in pursuance of an act of the fifty-seventh year of the reign of King George the Third* [set forth the title of the act], *for that the said A. B , after the passing of the said act, on , at , did, contrary to the said act* [here specify any offence against the act, as the case may be]. *Wherefore I* [or *we*], *the said , do adjudge that the said A. B. do pay the sum of , as a penalty for this offence, in pursuance of the said act.* (18.) Conviction for offences subject to pecuniary penalties, by the 57 Geo. III. c. 19.

Rivers and Navigation.

As to the offence of destroying, &c. banks, locks, &c. of rivers, *see ante*, "*Malicious Injuries to Property.*"

As to the offence of stealing from vessels, *see* "*Larceny,*" Vol. III.

As to offences on the Thames, *see* "*Thames,*" Vol. VI.

A river which is common to all the queen's subjects is a highway; so is a navigable river. (*See* "*Highways,*" Vol. III. p. 502.) How far a river a highway.

Every creek or river into which the tide flows, is not on that account necessarily a public navigable channel, although sufficiently large for that purpose; but the flowing of the tide into such a creek or river is strong *primâ facie* evidence that it is a public navigation. (*Per Bayley, J., in R.* v. *Montague*, 4 *B. & Cres.* 599.)

The right to a passage in a public river cannot be extinguished, except by writ of *ad quod damnum*, by act of parliament, or by natural causes. (*R.* v. *Montague*, 4 *B. & C.* 603; 6 *D. & R.* 616, *S. C.*; *Vooght* v. *Winch*, 2 *B. & Ald.* 662.) In *Com. Dig. Chemin* (*A. I.*) it is said that a navigable river is in the nature of a highway; and, if the water alters its course, the way alters. But this is not free from doubt. (*See* 1 *Russ. on Crimes*, 3*rd ed.* 378, *n.*) How extinguished.

A charge for the amendment of a river may sometimes be incurred. (*Mayor of Lynn* v. *Turner*, *Cowp.* 86.) If a river be stopped to the nuisance of the country, and none appear bound by prescription to clear it, those who have the piscary, and the neighbouring towns who have common passage and easement therein, may be compelled to do it. (1 *Hawk. P. C.* 75, *s.* 13; *Bac. Ab. Nuisance*, (*b*); 2 *Roll. Ab.* 137.) Amending of

The soil of all fresh rivers that are *publici juris*, *primâ facie* belongs, *usque filum aquæ*, to the adjoining proprietors. (*De Jure Maris*, p. 9.) And the soil of arms of the sea, *primâ facie*, belongs to the queen. (*Id.* p. 1.) Soil of.

Where an act of parliament, passed for the purpose of making navigable a natural river, does not vest in the undertakers of the navigation

Soil of.

the bed of the river, but gives them, for that purpose, a mere privilege of scouring and cleansing it, they are not occupiers of the land used for the purpose of navigation, but have a mere easement in it. (*R.* v. *Irwell and Mersey Navigation*, 9 *B. & C.* 95; 4 *Man. & R.* 84, *S. C.*; *R.* v. *Thomas*, 9 *B. & C.* 114; *S. C. nom. Rex* v. *Avon Company*, 4 *Man. & R.* 23; *and see R.* v. *Aire and Calder Navigation*, *Id.* 827.)

Towing paths.

The public are not entitled at common law to tow on the banks of ancient navigable rivers. (*Ball* v. *Herbert*, 3 *T. R.* 253.) But a right to a track path on each side of the river Tees (alternately) for towing without paying any acknowledgment, was found upon a trial at bar. (*Pierce* v. *Fauconberge, Lord*, 1 *Burr.* 292.) If an act of parliament for inclosing and allotting the common and waste lands of a parish through which a navigable river flows, empower commissioners to set out such public and private roads and ways as they shall think necessary, and direct that all roads and ways not so set out shall be deemed part of the lands to be allotted; an ancient towing path upon the banks of the river, though not set out by the commissioners, still subsists, for it is not within their jurisdiction. (*Simpson* v. *Scales*, 2 *B. & P.* 496.) A statute authorizing the making of a new course for a navigable river and turning the old part into a floating harbour, will not, without words for the purpose, put an end to a public towing-path upon that part, but such towing-path will be liable to be used as such for the purposes of the harbour, and it will make no difference though the river was a tide river, and not navigable at low water. (*R.* v. *Tippett*, 1 *Russ. on Crimes*, 3*rd ed.* 347.)

Right to raise banks of, &c.

As to the right of proprietors of land adjoining a river to raise the bank so as to prevent it from overflowing his land, *see* "*Highways*," Vol. III. p. 580.

Weirs in.

As to the right to erect weirs, &c., in a river, *see* "*Highways*," Vol. III. p. 579.

Nuisances to.

As to what are nuisances to rivers, *see Id.*

By acts relating to a river navigation, commissioners were authorized to make such cuts as they should deem necessary for the navigation, provided that no cut should divert or stop up the present channel of the river, or alter the course of the stream. If any person should think himself injured by any work made by the commissioners, and should make complaint to the commissioners, they were to hear, and report to a subsequent general meeting, at which the commissioners were to make such order, determination, and judgment thereon, as to them should seem just, and give such satisfaction as they should think reasonable. And, if the party complaining should be dissatisfied with such order, &c., he might appeal to the quarter sessions, who should make adjudication thereon, and award such costs to either party as they should think reasonable, which order and determination should be final and conclusive, to all intents and purposes whatever. (*Rex* v. *The Thames and Isis Navigation*, 5 *Ad. & Ell.* 804.)

A *mandamus* recited, that B. was seised in fee of an ancient towing-path, on a part of the river, and to the exclusive right of towing barges at that part, taking reasonable tolls for such towing by his horses; that the commissioners made a cut, by which the barges were enabled to avoid that part of the river, dispense with the use of the horses, and withhold the tolls; that the commissioners had, by the cut, injured the old channel of the river, and made the navigation of the part aforesaid less easy and convenient, and diverted the navigation of the river from B.'s towing-path, and rendered the towing-path, and his exclusive right, wholly unprofitable; that so B. was aggrieved, &c.; that he had complained to the commissioners and demanded compensation adequate to the injury he had sustained; that the commissioners, at a subsequent general meeting, made an order, determination, and judgment, that they could not accede to B.'s application; that B., being dissatisfied with such order, appealed to the quarter sessions, who ordered the commissioners to pay B. 1000*l.* in full compensation for the injury sustained by him, and 200*l.* costs, which they

refused to pay, and the writ commanded them to pay. Return: That the commissioners, believing B. had no claim to compensation, did not hear evidence on the complaint, or the amount of the alleged loss, and notified to B., that they refused to accede to his application; that B., treating this refusal as an order, &c., appealed; that on the appeal, the commissioners objected that the refusal was not an order, but the quarter sessions overruled the objection; that the cut enabled navigators to avoid a dangerous bend of the river; that B. was no further entitled to the path than as owner of the land: that they had not obstructed his towing-path, nor placed any obstacle to the navigation against the towing-path: that parties might, and sometimes did, still navigate by the old channel:—It was held—1. That the refusal of the commissioners was an order, determination, and judgment, from which an appeal lay to the sessions; —2. That the sessions had jurisdiction to award compensation to B., both for the damage suffered by his towing-path being less used, and for the obstruction of the old navigation;—3. That the order of sessions was final and conclusive, and must be held to have been made on both complaints, inasmuch as the return, (assuming it to negative the obstruction of the navigation), did not deny that the sessions had found such obstruction. 4. A peremptory *mandamus* was awarded to the commissioners to pay the money.

Nuisances to.

By the 19 Geo. II. c. 22, s. 3, reciting, "And whereas it frequently happens, that ships and vessels are run on shore, sunk or stranded in harbours, ports, channels, and navigable rivers, or are brought or drove into the same in a ruinous or shattered condition, and the owner, or some other person having, or pretending to have the command or power of such ship or vessel, frequently ship off or take away the rigging, tackle, and other valuable parts thereof, and permit the hulk to sink in the sand, in such harbours and places as aforesaid, and there to remain; and great damages often happen thereby, not only by other ships and vessels sticking or running thereon, but by filling up the channel in such harbours and places, so as to render the same impracticable, or very difficult or dangerous for navigation, before the same can be removed by any of the laws in being:" it is enacted, "That as soon as any ship or vessel shall, after the said first day of June, be sunk, stranded, or run on shore in any harbour, port, channel, or navigable river, or shall be brought or drove in, or be there in a ruinous or shattered condition as aforesaid, and permitted to remain there, and the owner, or some other person having, or pretending to have any property therein, or the command or power thereof, or any other person or persons by their or any of their order, privity or assent, shall begin to take down, or carry away any of the rigging or tackle, or if there shall not be any person to take care of the said ship or vessel, it shall be lawful for any one or more justice or justices of the peace for the county or place where or near such fact, accident, or offence shall happen, upon information thereof, and he and they are hereby authorized and required, to summon, or issue out his or their warrant or warrants to apprehend and bring before him or them the owner, or other person having or pretending to have the command or power over such ship or vessel; and upon his or their appearance or default, to proceed to examine the matter of fact, in manner and form aforesaid; and in case upon such examination, such justice or justices shall find any owner, or other person having or pretending to have the command or power over such ship or vessel, or any of the persons aforesaid, guilty of such offence as aforesaid, such justice or justices shall, and he and they is and are hereby required to issue his and their warrant or warrants for seizing and removing such ship or vessel, and also the rigging or tackle thereof, in such manner as such justice or justices shall order and direct; and if the owner, or such other person aforesaid, shall not within five days give security, according to the approbation of such justice or justices, to clear the harbour, port, channel, or river of such vessel, and of all wreck, and parts belonging to the same, and pay the charges and expences

Ship sunk or stranded, &c.,

in a harbour, and permitted to remain there,

justices to summon the owner, &c.

and upon conviction, to issue warrants for seizing and removing the ship and tackle,

and unless the owner give security within five days,

to make sale of the same.

19 Geo. II. c. 22. of seizing, removing, and disposing of such ship or vessel, tackle or furniture, then to cause the hulk, rigging or tackle to be sold, and with or out of the money arising by such sale, to pay the charges and expences of clearing the harbour or place where such ship or vessel shall lie; and also the charges and expences of seizing, removing and selling such ship, vessel, furniture and tackle, rendering the overplus, if any be, to the owner or owners of such manor where the same shall happen."

54 Geo. III. c. 159. By the 54 Geo. III. c. 159, s. 1, the 9 Geo. III. c. 30, and 10 Anne, c. 7, as far as they relate to the harbour moorings of the navy, and the 51 Geo. III. c. 73, are repealed.

Sect. 2. The admiralty may establish regulations for the preservation of the king's moorings, and for mooring merchant-ships. Such regulations to be published in the *Gazette*, and to be hung up conspicuously in custom-houses, &c.

No private ship of war, &c. to fasten to his majesty's moorings.

Sect. 3. "And be it further enacted, That if any private ship of war, transport or other private or merchant-ship or vessel, lighter, barge, boat or other craft whatsoever, for which no licence so to do shall have been first obtained in writing under the hand of any commissioner of the navy, port admiral or other person who shall be duly authorized by the said lord high admiral, or three or more of the said commissioners for executing the office of lord high admiral aforesaid, to grant such licences, for the time and purpose to be therein particularly specified, shall, unless forced thereto by stress of weather or other unavoidable accident, be moored or fastened to any of his majesty's moorings, chains, anchors, buoys, piles, ships or hulks, or shall in any manner be moored, anchored or placed within any such distances so to be appropriated as aforesaid to and for the sole use and purpose of moorings for his majesty's ships or vessels of war, or hired armed ships or vessels in his majesty's service, or within any such distance, so to be specified as aforesaid, from his majesty's docks, dock yards, arsenals, wharfs, moorings, ships or hulks, or within any such spaces so to be directed to be kept open as aforesaid, or in the fair way or channel or across the stream in any such port, harbour, haven or navigable river, so as to obstruct the passage or entrance into the same; the master or other person then on board, and having the charge or command of any such ship or vessel, lighter, barge, boat or other craft; and in case the proper master of any such ship or vessel, lighter, barge, boat or other craft so being moored, fastened, anchored or placed, shall not happen to be then on board the same, then the owner or owners thereof, whether he, she or they shall happen to be then on board the same or not, shall forfeit and pay a sum not exceeding the sum of 10*l.*, for each and every tide which such ship or vessel, lighter, barge, boat or other craft, shall stay and remain so moored, anchored or placed."

Power to remove private ships.

Sect. 4. "And, for the prevention of any damage which might otherwise be occasioned to his majesty's moorings, chains, anchors, buoys, piles, ships or hulks, and also for the prevention of delay in the public service, be it enacted, That in case the owner, master, or other person on board, for the time being having the charge or command of any private ship of war, transport or other private or merchant-ship or vessel, lighter, barge, boat or other craft, which shall be moored or fastened to any of his majesty's moorings, chains, anchors, buoys, ships or hulks, or which shall in any manner be moored, anchored or placed within any such distance as aforesaid, so to be appropriated to and for the sole use and purpose of moorings for his majesty's ships or vessels of war, or hired armed ships or vessels in his majesty's service, or within any such distance so to be specified as aforesaid from his majesty's docks, dock yards, arsenals, wharfs, moorings, ships or hulks, or within any such spaces so to be directed to be kept open as aforesaid, or in the fair way or channel of or across the stream in any such port, harbour, haven or navigable river, so as to obstruct the passage or entrance into the same, shall neglect or refuse to unmoor, and to remove any such ship or vessel, lighter, barge, boat or other craft, which shall be moored, anchored or placed as aforesaid,

out of and beyond such spaces and distances as aforesaid, and also out of such fair way, channel or stream as aforesaid, for the space of one hour next after notice to him or them given in writing, or left on board such ship or vessel, lighter, barge, boat or other craft, for that purpose, by one of his majesty's naval or dock yard officers; that then it shall be lawful for any person so to be appointed harbour master as aforesaid, and also for any officer belonging to any of his majesty's ships or vessels of war, docks, dock yards or arsenals, and for any person or persons acting in his or their aid or assistance, and he and they is and are hereby authorized and empowered to unmoor such ship or vessel, lighter barge, boat or other craft, and also to remove the same to some proper place out of and beyond such spaces and distances as aforesaid, and also out of such fair way, channel or stream; and every such owner, master or other person, so neglecting and refusing as aforesaid, shall, for every such offence, forfeit and pay the further sum of 10*l.*"

Penalty.

Sect. 5. "And whereas it sometimes happens that his majesty's mooring anchors are hooked by the anchors of private ships of war, transports and other private and merchant ships or vessels by accident, and without the default of the owners, masters or other persons having the charge or command thereof; but great danger and damage are and may be occasioned by unhooking the same, or by leaving the anchors of such moorings in an unsafe manner, or in an improper place; for prevention thereof, be it enacted, That whenever any private ship of war, transport or other private or merchant ship or vessel, shall in any manner, either by accident or otherwise, hook any of his majesty's moorings, the owner, master or other person having the charge or command of such ship or vessel, shall not proceed to unhook the same, under the penalty of 10*l.* to be paid by every such owner, master or other person, but shall forthwith give notice thereof to the king's harbour master, commissioner of the navy, or other chief officer of his majesty's dock yard or naval yard, whichever shall be nearest to the place where the same may happen, in order that full and effectual aid and assistance may be forthwith given, for the purpose of clearing such private ship of war, transport or other private or merchant ship or vessel, from such moorings, without damage to the same; for which said aid and assistance, every such master, owner or other person, shall pay such reasonable sum of money, not exceeding 5*l.*, as shall be adjudged in a summary way, by any commissioner of the navy or justice of the peace, to be recovered in the same manner as any penalty or forfeiture is by this act directed to be recovered, and with such power of commitment, on nonpayment thereof, as in cases of penalties and forfeitures under this act."

Notice given when his majesty's moorings are hooked.

Sect. 6. "And be it further enacted, That it shall and may be lawful to and for the said lord high admiral, or three or more of the commissioners for executing the office of lord high admiral aforesaid for the time being, and he and they is and are hereby authorized and empowered, from time to time, by order or notice in writing under his or their respective hand or hands, or the hand of his or their secretary, to prohibit the breaming of any ships or vessels, lighters, barges, boats or other craft, at any place or places on shore, where it may to them seem proper and necessary to prohibit the same, and also to order at what place or places, within or near all or any of such ports, harbours, havens, roads, roadsteads, sounds, channels, creeks, bays and navigable rivers in this kingdom as aforesaid, no private ships of war, transports or other private or merchant ship or vessel, lighter, barge, boat, or other craft, shall come, or be laden with or having on board thereof any quantity or quantities of gunpowder, exceeding five pounds weight in the whole; and also to appoint fit and proper places, either afloat or on shore, where all gunpowder, exceeding five pounds weight in the whole, shall and may be left and deposited, by and from, or taken and received into any such ships or vessels, lighters, barges, boats or other craft; all which orders, notices and appointments of such places shall be notified in the *London Gazette;*

Places appointed for breaming ships, and leaving and receiving gunpowder.

54 Geo. III. c. 159.

and that the master general or principal officers of his majesty's ordnance, or any three of them for the time being, shall appoint fit and proper persons there, to take in and receive, and also to give and deliver out all such gunpowder, and upon the taking in thereof to give receipts for the same, and also to grant a certificate to any such owner, master or other person, of his having left and deposited all such gunpowder, and having made and signed a declaration in writing under his hand, of his having so done, and that neither he nor any other person or persons, to his knowledge or belief, had any gunpowder, exceeding five pounds weight in the whole, then on board such ship or vessel, lighter, barge, boat or other craft, as the case may require; which declaration every such master, owner or other person is hereby required to make, as the case may require, and for which said certificate the sum of 1*s.*, and no more, shall be paid; and every such person so to be appointed as aforesaid shall be accountable to the owner or owners of all such gunpowder for the same, and shall deliver the same to such owner or owners thereof upon demand, on being paid such reasonable sum of money for warehouse room, in proportion to the quantity of such gunpowder, and the time for which the same shall have been kept, as shall be ascertained and fixed, either by the said lord high admiral, or three or more of the commissioners for executing the office of lord high admiral aforesaid, or by the master general and principal officers of his majesty's ordnance, or any three or more of them, by any rule, order or regulation, to be made in that behalf; and that no ship or vessel having or having had any such quantity of gunpowder on board, shall be allowed to clear at any custom-house in any port where there shall be any such place so to be appointed as aforesaid, without producing and leaving such certificate, together with the christian and surname of the pilot (if any) who piloted such ship or vessel into such port, at the custom-house of such port; and all and every owner, master, pilot or other person, having the charge or command of any private ship of war, transport or other private or merchant ship or vessel, lighter, barge, boat or other craft, which shall come, arrive or be (except in cases of stress of weather) within any of the distances so to be specified as aforesaid, having on board thereof any quantity or quantities of gunpowder exceeding five pounds weight together in the whole, or which, having come in under stress of weather, shall not unship and deliver all such gunpowder within the space of twenty-four hours next after the ceasing of such weather (and thereof forthwith give notice at the custom-house to excuse the production of such certificate), shall forfeit and pay the sum of 5*l.* for each and every five pounds weight of gunpowder which shall be found or which shall have been on board any such ship or vessel, lighter, barge, boat or other craft, within any of the distances so to be specified as aforesaid, and so in proportion for any greater or less quantity; and every such pilot, who shall wilfully and knowingly offend in the premises, and shall be thereof lawfully convicted, shall for ever thereafter be rendered incapable of acting as a pilot."

Penalty.

In what case pilots rendered incapable.

Breaming ships, except at appointed places.

Sect. 7. "And be it further enacted, That no private ship of war, transport or other private or merchant ship or vessel, lighter, barge, boat or other craft whatever, shall be breamed afloat in any of the ports, harbours or havens, or other places of this kingdom, for which any such rules, orders or regulations, shall be made as aforesaid, or in which the same shall be in force, nor at any place on shore where such breaming shall have been prohibited as aforesaid, upon pain that every person offending therein shall, for every such offence, forfeit and pay the sum of 5*l.*; and that no fire shall be kept on board of any such ship or vessel, lighter, barge, boat or other craft, in any such port, harbour or haven, between the hours of eleven in the evening and five in the morning, from the first day of October to the thirty-first day of March inclusive; nor between the hours of eleven in the evening and four in the morning, from the first day of April to the thirtieth day of September inclusive, in every year; upon pain that every owner, master or other person, having

Penalty.

Fires on board ships, &c.

the charge or command of any such ship or vessel, lighter, barge, boat or other craft, shall, for every such offence, forfeit and pay the sum of 5*l.*; and that no pitch, tar, rosin, turpentine, grease, tallow, oil or any other combustible matter whatsoever, shall be boiled or heated on board any such ship or vessel, lighter, barge, boat or other craft whatsoever, within the distance of two hundred and fifty yards from any of his majesty's ships or vessels of war, or hired armed ships or vessels in his majesty's service, in any of the ports, harbours, havens, roads, roadsteads, creeks, sounds, bays or navigable rivers, as aforesaid, where the same may happen to be; nor within the distance of two hundred and fifty yards from any of his majesty's docks, dock yards, arsenals or wharfs, upon pain that every owner, master or other person, having the charge or command of any such ship or vessel, lighter, barge, boat or other craft, shall, for every such offence, forfeit and pay the sum of 5*l.*" 9 Geo. III. c. 59. Penalty. Turpentine, &c. boiled, &c. on board ships, &c. Penalty.

Sect 8. "And be it further enacted, That if any owner, master or other person, having the charge or command of any private ship of war, transport or other private or merchant ship or vessel whatsoever, shall, while such ship or vessel shall lie or be in any of such ports, harbours, havens, roads, roadsteads, sounds, channels, creeks, bays and navigable rivers, within the United Kingdom as aforesaid, keep any gun or guns of and belonging to such ship or vessel shotted or loaded with ball, or shall fire or discharge or cause or permit to be fired or discharged any gun or guns on board such ship or vessel lying therein, before sun-rising or after sun-setting, every such owner, master or other person as aforesaid, shall, for every such gun so kept shotted or loaded, forfeit the sum of 5*s.*, and for every gun so fired or discharged, the sum of 10*s.*" Guns shotted, fired, &c. Penalties.

Sect. 9. "And, for the better discovery of the offenders against this act, and for the purpose of bringing them to punishment, be it further enacted, That it shall and may be lawful to and for any such harbour master, and also for any officer belonging to any of his majesty's ships or vessels of war, docks, dock yards or arsenals, and also for any person or persons in their or any or either of their aid or assistance, at any hour between sun-rising and sun-setting, to go and enter into and on board of any such ship or vessel, lighter, barge, boat or other craft, in order to search for gunpowder, guns shotted, and the heating and melting such combustible matters aforesaid, within the limits wherein the same are by this act prohibited; and if the owner, master or other person then on board, having the charge or command of any such ship or vessel, lighter, barge, boat or other craft, shall, upon demand in that behalf made, refuse to permit or shall not permit any such person or persons as aforesaid to come and enter into and on board of any such ship or vessel, lighter, barge, boat or other craft, and to make a due and proper search and examination for the purposes aforesaid, every such owner, master or other person as aforesaid, shall, for every such offence, forfeit the sum of 10*l.*" Private ships, &c. searched for gunpowder, &c. Owner, &c. refusing. Penalty.

Sect. 10. "And, for the better prevention of the embezzlement of his majesty's stores, be it enacted, That no person or persons, not being in his majesty's service, or employed in his majesty's dock yards or arsenals, and in the regular performance of his duty, or not being authorized so to do for his majesty's use, by licence under the hand of some commissioner of his majesty's navy, which said licence any such commissioner is hereby empowered to grant, and also to revoke at his will and pleasure, shall on any account or pretence whatsoever creep or sweep for anchors, cables, ropes, rope yarns or other stores, lost or supposed to be lost in any of the ports, harbours, havens, roads, roadsteads, sounds, channels, creeks, bays and navigable rivers of this kingdom as aforesaid, within the distance of one hundred yards from any of his majesty's ships or vessels of war, or hired ships or vessels in his majesty's service, or from any moorings belonging to his majesty, or within any such distance so to be marked as aforesaid, upon pain of forfeiting, for every such offence, the sum of 10*l.*" Unlicensed persons sweeping for his majesty's stores. Penalty.

Sect 11. "If the owner, master, or other person, having the charge or Casting ballast,

54 Geo. III. c. 159.

&c., into harbours, &c.

command of any private ship of war, transport, or other private or merchant ship or vessel, lighter, barge, boat, or other craft whatsoever, or any person working any quarry, mine, or pit, near to the sea, or to any such harbour, haven or navigable river as aforesaid, or any person or persons whatsoever, shall cast, throw, empty, or unlade, or cause or procure to be cast, thrown, emptied, or unladen, either from or out of any such ship or vessel, lighter, barge, boat, or other craft, or from the shore, any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth, into any of such ports, roads, roadsteads, harbours, havens, or navigable rivers of this kingdom as aforesaid, so as to tend to the injury or obstruction of the navigation thereof, or in any place or situation on shore where the same shall be liable to be washed into the sea, or into any such ports, roads, roadsteads, harbours, havens, or navigable rivers, either by ordinary or high tides, or by storms or land floods; all and every such person and persons so offending shall, for every such offence, forfeit and pay a sum not exceeding the sum of 10*l.* over and besides all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this act, such expences to be recoverable in such manner and with such power of commitment, on nonpayment thereof, as in cases of penalties or forfeitures under this act: Provided, that nothing herein contained shall extend or be construed to extend to the casting out, unlading, or throwing out of any ship or vessel, lighter, barge, boat, or other craft, any stones, rocks*, bricks, lime or other materials used or to be used in or towards the building, repairing, or keeping in repair, any quay, pier, wharf, wear, bridge or other building, or the banks or sides of any port, harbour, haven, channel or navigable river, or any materials for repairing any highway; any thing herein contained to the contrary thereof in anywise notwithstanding" [*See* the former act of 19 Geo. II. c. 22, s. 1, &c.]

Penalty.

Proviso.

* Sic.

Unloading ballast from a ship into a machine or vessel called a hopper, in a navigable river, with intent to carry and cast it into the high and open sea, and carrying it accordingly and casting it out of the said hopper, when the water was more than fourteen fathoms deep, at a distance from any port, haven, channel, or navigable river, is an offence against the positive enactment of 19 Geo. II. c. 22, and subjects the offender to the penalty of s. 1. (*Brucklesbank* v. *Smith*, 2 *Burr.* 656.)

In what manner ships, &c. may unlade ballast.

Sect. 12, for the more effectually preventing such injuries, enacts, "That no ship or vessel, lighter, barge, boat, or craft whatsoever, shall unlade on any part of the shore (except on some wharf properly constructed for the purpose) any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth, except at the time of high water, or within two hours before or two hours after high water; and that for every such purpose, every such ship or vessel, lighter, barge, boat, or craft, shall approach the shore, as far as the tide and the draught of water of such ship, vessel, lighter, barge, boat, or craft will admit, and shall, under no circumstances, and in no situation, deposit any of the said matters below low water mark at neap tides; and that every vessel drawing above eleven feet of water at the stern shall unlade all such materials into some lighter, barge, or boat, as hereinbefore directed, in order that the same may be conveyed as near the shore as possible at the time of high water, as hereinbefore directed."

Ballast cast on shore from side of ship nearest to land.

Sect. 13. "All such ballast and other matters shall, in all the above-mentioned cases, be cast on shore from the side of the ship, lighter, barge, boat, or other craft, which shall be nearest to the land, and not otherwise; and every person who shall offend in any of the above particulars, shall, for every such offence, forfeit and pay a sum not exceeding the sum of 10*l.*, over and above all expences which may be incurred in removing to a proper place the said matters which may have been deposited contrary to the provisions of this act; such expences to be recoverable in such manner, and with such powers of commitment on non-payment thereof, as in cases of penalties or forfeitures under this act."

Penalty.

Taking ballast

Sect. 14. And, in order to prevent damage being done to the shores

or banks of the ports, harbours, or havens in this kingdom, it is enacted, "That no person or persons shall take any ballast or shingle from the shores or banks, or any portion of the shores or banks, of any port, harbour, or haven of this kingdom, from which the commissioners for executing the office of lord high admiral of the United Kingdom for the time being shall find it necessary for the protection of such port, harbour, or haven, or the works thereof, by order under their hands, or the hands of any three of them, or the hands of his or their secretary, and published in the *London Gazette*, shall prohibit the taking or removing of such shingle or ballast, upon pain of forfeiting for every such offence the sum of 10*l*." 54 Geo. III. c. 159. from shore in harbours. Penalty.

Sect. 15. "In the taking of ballast into any ship or vessel, lighter, barge, boat, or other craft, and also in the discharging of the same from any ship or vessel into any lighter, boat, barge, or other craft, every such ship or vessel, lighter, barge, boat, or other craft, shall be provided with, and shall make use of, one or more tarpaulin or tarpaulins, properly stretched and spread, in order to prevent such ballast, or any part thereof, from falling into the sea, or into any harbour, haven, or navigable river; and, in case any person or persons shall either take any ballast into any ship or vessel, lighter, barge, boat, or other craft, or shall discharge the same from any ship or vessel into any lighter, barge, boat, or other craft, without using such sufficient tarpaulin or tarpaulins, properly stretched and spread, in order to prevent such ballast or any part thereof from falling into the sea, or into any such harbour, haven or navigable river; all and every person or persons offending therein shall, for every such offence, forfeit and pay the sum of 5*l*." Tarpaulins to be used in taking and discharging ballast. Penalty.

Sect. 16. Admiralty may dispense with the provisions relative to ballast.

Sect. 17. Vessels sunk or stranded, after twenty-eight days' refusal or neglect of owner to raise the same, may be weighed and raised under direction of harbour master, or commissioner of the navy, and the charge of raising be paid from the sale of vessel or goods on board.

Sect. 18. The harbour master, &c., is indemnified for acts in pursuance of this act.

Sect. 19. On neglect of harbour master, &c., for two months, the owner or master of the vessel may weigh and raise it.

Sect. 20. Commissioners of the navy, residing at any port, &c., near to the place where any offence is committed against this act, are empowered to act as justices of the peace for all the purposes of the act

Sect. 21. "All penalties and forfeitures imposed by this act shall be sued for within twelve calendar months next after the offence or offences shall be committed, before any commissioner of the navy or justice of the peace residing at or near to the place where any such offence or offences shall be committed; all which said penalties and forfeitures shall go and be applied as follows; that is to say, one moiety thereof to the use of his majesty, his heirs, and successors, and the other moiety thereof, with full costs, to be adjudged by such commissioner of the navy or justice of the peace, to the informer; and every such commissioner of the navy, and justice of the peace, is hereby authorized and required, upon information exhibited, or complaint made, to grant and issue his warrant in writing under his hand to bring before them respectively such offender or offenders at the time and place in such warrant specified; and if on the conviction of the offender or offenders respectively, on his, her, or their confession, or on oath (which oath every such commissioner of the navy and justice of the peace is hereby authorized and empowered to administer), such penalty or forfeiture, together with such costs as aforesaid, shall not be forthwith paid, it shall be lawful for such commissioner of the navy or justice of the peace to commit any such offender or offenders to the common gaol or house of correction for the county, city, or borough, at or near to the place where the offence or offences shall be committed, there to remain, without bail or mainprize, for any time not exceeding three months, unless such penalty or forfeiture and costs shall be sooner paid." Penalties, &c., how recovered, &c. Imprisonment.

Sect. 22. "It shall be lawful for any commissioner of the navy residing Extent of juris-

54 Geo. III. c. 159.

diction of commissioners of navy and justices of peace.

at or near to any port, harbour, or haven, or any part thereof, or for any justice of the peace for any county, city, or borough, acting in and for any district or place next adjoining to any such port, harbour, haven, road, roadstead, sound, channel, creek, bay, or navigable river, or any member of any of them, where any such offence or offences may be committed, to proceed in the execution of this act, and of all the powers and authorities thereof, herein and hereby given to commissioners of the navy and justices of the peace, in such and the same manner, and as fully and effectually, to all intents and purposes, as if such offence or offences had been committed locally within the limits of the jurisdiction of such commissioner of the navy or justice of the peace, although the same may have been committed out of the limits of the jurisdiction of such commissioner or justice, or out of the body of any county of this realm."

Conviction, how drawn up.

Sect. 23. "And for the more easy and speedy conviction of offenders against this act, and also for the prevention of frivolous and vexatious appeals, be it further enacted, That every commissioner of the navy and justice of the peace before whom any person or persons shall be convicted of any offence or offences against this act, shall and may cause the conviction to be drawn up, according to the following form, or in any form of words to the like effect, *mutatis mutandis*; which conviction shall be good and effectual to all intents and purposes, without stating the case, or the facts, or evidence, in any more particular manner; that is to say,

Form.

'*Be it remembered, that on the day of , in the year of our Lord , A. B. is convicted before me , one of the commissioners of the navy, or one of his majesty's justices of the peace for the of* , [as the case may be,] *for that the said A. B., on the day of , at , did* [here state the offence against this act]. *contrary to the statute in such case made and provided. Given under my hand and seal the day and year first above written.*'

Written on parchment, &c.

Filed.

Certiorari, &c.

Which conviction the said commissioner or justice shall cause to be fairly written upon parchment or paper, and returned to the next general quarter sessions of the peace for the county, division, city, town corporate, liberty, or place where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county, division, or place; and the same shall not be removed by *certiorari*, advocation, or suspension, or any other process whatsoever, into any court whatsoever."

Witnesses not attending.

Penalty.

Sect. 24. "If any person or persons shall be summoned as a witness or witnesses to give evidence before any such commissioner or justice or justices of the peace, touching any of the matters relative to this act, either on the part of the informer or prosecutor, or of the party or parties accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed by such commissioner or justice or justices of the peace before whom the complaint or prosecution shall be depending, that then every such person shall forfeit for every such offence the sum of 10*l.*, to be recovered, levied, and paid, and applied in such manner, and by such means, as is above directed with respect to fines on summary convictions."

Perjury, &c.

Sect. 25. Persons wilfully and corruptly giving false evidence, or wilfully and corruptly swearing or affirming anything false before commissioner or justice, in any matter relating to the execution of this act, declared liable to the penalties of wilful and corrupt perjury.

Appeal.

Notice.

Sect. 26. "It shall and may be lawful to and for any person or persons so convicted by any commissioner of the navy or justice of the peace before mentioned, of any offence or offences against this act, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place, where the matter of appeal shall arise, first giving ten days notice of such appeal to the person or persons appealed against, and of

the matter thereof, and entering into a recognizance before some commissioner of the navy, or justice of the peace for such county, city, or place, with two sufficient sureties, conditioned to try such appeal, and for abiding the determination of the court therein; and such justices at the general quarter sessions shall, upon due proof of such notice having been given, and a recognizance having been entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable; and the decision of the said justices therein shall be final, binding, and conclusive."

54 Geo. III. c. 159.

Recognizance.

Costs.

Final.

Sect. 27. Action or suit to be commenced within six months after offence.

Limitation of actions.

Sect. 28. Act not to affect rights of property, privileges, jurisdiction, and powers of conservancy.

Reservation of rights.

As to the offence of maliciously destroying, &c., the banks and locks, &c., on navigable rivers, see the 7 & 8 Geo. IV. c. 30, ss. 12, 13, 14; "*Malicious Injuries to Property*," *ante*.

Damaging banks locks, &c.

As to the offence of stealing from ships, &c., on rivers, &c., see the 7 & 8 Geo. IV. c. 29, s. 17; "*Larceny*," Vol. III.

Stealing from ships, &c. on.

——— *to wit. Be it remembered, that on, &c., at, &c., A. B., of, &c., who as well for our lady the Queen as for himself doth prosecute in this behalf, personally cometh before me, J. P., one of her majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and as well for our said lady the Queen as for himself, informeth me, that C. D., of, &c., within the space of twelve calendar months now last past, to wit, on the, &c., at, &c. in the said county, being then and there master and a person having the charge of a certain private vessel, called , did cast, throw empty, and unlade, and cause and procure to be cast, thrown, emptied, and unladen, from and out of the said vessel, a large quantity, to wit, tons, of ballast, gravel, earth, and rubbish, into a certain navigable river of this kingdom there, called the* [*Thames*], *so as to tend to the injury and obstruction of the navigation of the said river; contrary to the form of the statute in such case made and provided; whereby, &c.* [As usual, to the end. See "*Conviction*," Vol. I.]

Information on 54 Geo. III. c. 159, s. 11, for throwing ballast, &c. into a river, &c.

Robbery.

As to burglary, *see* "*Burglary*," Vol. I.

As to stealing from the person, without force or putting in fear, *see* "*Larceny*," Vol. III.

As to threats with intent to rob, *see* "*Threats*," Vol. VI.

As to assaults with intent to rob, *see* "*Assault*," Vol. I.

As to levying of hue and cry on a robbery, *see* "*Hue and Cry*," Vol. III.

As to rewards for apprehending robbers, *see ante*, "*Rewards*."

Herein of:—

I. *The Offence of Robbery, and extorting Money by Threats to accuse another of Sodomy, &c.*, p. 776.

II. *Indictment for, and Trial*, p. 782.

III. *Punishment for*, p. 783.

IV. *Principal and Accessory*, p. 784.

V. *What to be done with the Goods of Person Robbed*, p. 784.

VI. *Forms*, p. 784.

1. *Offence of, &c.*

I. The Offence of, and extorting Money by Threats to accuse of Sodomy, &c.

Two kinds of robbery.

There are two kinds of robbery; from the *person* and from the *house*: it is the former of these that is treated of under this *title* the latter, viz. robbery from the house, belongeth to the *titles*, "*Larceny*," and "*Burglary*."

Robbery, what.

Robbery from the person is a *felonious taking of money or goods, to any value, from the person of another, or in his presence, against his will, by violence, or putting him in fear.* (2 *East's P. C.* 707; 4 *Bla. Com.* 243; 3 *Inst.* 68.)

Felonious.

Felonious.]—For to make it robbery there must be a felonious intention; and so it ought to be laid in the indictment. (1 *Hale*, 532; *and see* fully, as to the felonious intent, "*Larceny*," Vol. III.) A. had set wires, in which game was caught; B., a gamekeeper, found them, and took the game and wires for the use of the lord of the manor. A. demanded them, with menaces, and B. gave them up. The jury found that A. acted under a *bonâ fide* impression that the game and wires were his property. It was held, no robbery, but a trespass. (*R.* v. *Hall*, 3 *C. & P.* 409; *and see* 1 *Russ. on Crimes*, 872.)

Taking.

Taking.]—The taking must be against the will of the owner, and, to constitute the crime of robbery, the property must be taken from the person either by violence or by putting him in fear; either of these circumstances is sufficient. But no sudden taking of a thing unawares from the person, as by snatching any thing from the head or hand, is sufficient, unless some injury be done to the person, or unless there be some previous struggle for the possession of the thing taken. If a robber cut a man's girdle in order to get his purse, and the purse thereby fall to the ground, and the robber run off, or be apprehended before he can take it up, this would not be robbery, because the purse was never in the possession of the robber. (1 *Hale*, 583; 1 *Leach*, 228.)

Where the defendant drew a book from the inside pocket of the prosecutor's coat, about an inch above the top of the pocket, but whilst the book was still about the person of the prosecutor, the prosecutor suddenly put up his hand, upon which the defendant let the book drop, and it fell into the prosecutor's pocket; this was holden, by a majority of the judges, not to be a sufficient asportation to warrant a conviction for stealing from the person, because from the first to the last, the book remained about the person of the prosecutor; although it was sufficient to constitute a simple larceny. (*R.* v. *Thompson*, *R. & M.* 78.)

A taking in law is sufficient to constitute the offence. (3 *Inst.* 68; 1 *Hale*, 532.) If, therefore, thieves attack a man to rob him, and finding little or nothing about him, force him by menace of death to swear to fetch them money, which he does accordingly, and delivers it to them, while the fear of the menace still continues upon him, and they receive it, this is a sufficient taking in law. (3 *Inst.* 68; 1 *Hale*, 532; 2 *East, P. C. c.* 16, *s.* 129, *p.* 714.)

Where the offence has been once completed by a taking, the offender's subsequently delivering up the thing will not purge it. (1 *Hawk. P. C. c.* 34, *s.* 2.)

The money or goods

Money or Goods.]—At common law, the goods taken must be such as would constitute the crime of larceny; but the 7 Will. IV. & 1 Vict. c. 87, s. 12, extends the taking to any "*chattel, money, or valuable security*," the words used in the 7 & 8 Geo. IV. c. 29.

The value of the goods is immaterial. (1 *Hale*, 532.) But they must be of some value to the party robbed, otherwise the offence will only amount to an assault with an intent to rob; and, therefore, where the defendant compelled the prosecutor, by threats, to give her his promissory note for a sum of money, it was holden by the judges not to be a robbery, because the note was of no value to the prosecutor. (*R.* v.

Phipoe, 2 *Leach*, 673; *R.* v. *Edwards*, 6 *C. & P.* 515, 521; *see* "*Larceny*," Vol. III.) In *R.* v. *Bingley*, (5 *C. & P.* 602,) the prisoner attacked the prosecutor, and took from him a piece of paper, containing a memorandum of money that a person owed him, and *Gurney*, B., held it sufficient to constitute robbery. The thing taken need not be of the value of any known coin, even of a farthing. (*R.* v. *Morris*, 9 *C. & P.* 349.) 1. *Offence of, &c.*

From the Person of Another, or in his Presence.]—The goods must be proved to have been taken, either from the person of another, or in his presence. (*R.* v. *Grey*, 2 *East's P. C.* 708; *and see R.* v. *Francis*, 2 *Stra.* 1015.) A man went to bed with a prostitute, having put his watch in his hat, on the table; the woman stole the watch while the man was asleep: it was held, that the offence was that of stealing in the dwelling-house, and not of stealing from the person. (*Rex* v. *Hamilton*, 8 *C. & P.* 49.) From the person of another.

If a thief put a man in fear, and then in his presence drive away his cattle, it is robbery. (1 *Hale*, 533.) So, if a man, being assaulted by a robber, throw his purse into a bush; or, flying from a robber, let fall his hat; and the robber, in his presence, take up the purse or hat and carry it away, this would be robbery. (1 *Hale*, 533.) Upon an indictment for robbery, it appeared that the prosecutor was in company with another, who had the prosecutor's bundle, and who, upon the prosecutor being attacked with great violence by the prisoner, dropped down the bundle, and ran to the prosecutor's assistance, when one of the prisoners took up the bundle, and ran off with it:—*Vaughan*, B., held, that this was not robbery, because the bundle was not in the prosecutor's possession at the time. (*R.* v. *Fallows*, 5 *C. & P.* 508.)

Against his Will.]—The goods must be taken against the will of the party robbed. Therefore, where the party robbed concerted and connived at the robbery, and got one of his confederates to procure two strangers to commit it, for the purpose of getting a reward upon the apprehension and conviction of the strangers, the judges held that it was not a robbery, because the property was not taken against the party's will. (*R.* v. *M'Daniel et al.*, *Fost.* 121.) Against his will.

By Violence.]—In a case where a lady was stepping into her carriage, the prisoner snatched at her diamond ear-ring, and separated it from her ear by tearing the ear entirely through, but there was no proof of the ear-ring ever having been seen in his hand, and, upon the lady's arrival at home, it was found amongst the curls of her hair: the judges, on a case reserved, were all of opinion, that there was a sufficient taking from the person to constitute robbery. They thought that it was sufficient, as the ear-ring had been in the possession of the prisoner, separate from the lady's person, though but for a moment, and though he could not retain it, but probably lost it again the same instant. (*Lapier's case*, *O. B.*, *May*, 1784, 1 *Leach*, 320.) By violence.

Snatching an article from a man will constitute robbery, if it be so attached to his person or clothes as to afford resistance. (*R.* v. *Mason*, *R. & R. C. C.* 419.) The prosecutor's watch was fastened to a steel chain, which went round his neck; the seal and chain hung from his fob. The prisoner laid hold of the seal and chain, and pulled the watch from the fob, but the steel chain still secured it: upon which the prisoner, by two jerks, broke the steel chain and made off with the watch. Case saved for the opinion of the judges upon the question, whether this was a robbery?—The judges were unanimous that it was, as the prisoner did not get the watch at once, but had to overcome the resistance made by the steel chain, and used actual force.

Where the prisoner caught hold of the prosecutor's watch chain, and jerked his watch from his pocket with considerable force, upon which a scuffle ensued, and the prisoner was secured:—*Garrow*, B., held that the force used to obtain the watch did not make the offence amount to robbery, nor did the force used afterwards in the scuffle; for the force necessary to constitute robbery must be either immediately before or at the time of the larceny, and not after it. (*R.* v. *Gnosil*, 1 *C. & P.* 304.)

1. *Offence of, &c.*

The rule appears to be well established, that no sudden taking or snatching of property unawares from a person is sufficient to constitute robbery, unless some injury be done to the person, or there be a previous struggle for the possession of the property, or some force used to obtain it. (*R.* v. *Steward*, 2 *East's P.C.* 702; *R.* v. *Horner*, *id.* 703; *Jervis' Arch. C. L.* 256, *9th ed.*)

or by putting him in fear.

Or by putting him in Fear.]—Robbery may also be constituted by putting in fear as well as by force; or perhaps, in strictness, it may be said that fear will supply the place of force; yet it is not necessary that actual fear should either be laid in the indictment or strictly and precisely proved, provided the property be taken with such circumstances of violence or terror, or threatening by word or gesture, as would, in common experience, induce a man to part with it from an apprehension of personal danger; for the law, *in odium spoliatoris*, will presume fear where there appears to be so reasonable a ground for it. But it is necessary that it be taken against the will of the party. (2 *East's P. C.* 711; 1 *Hale*, 533.)

A colourable gift, which in truth was extorted by fear, amounts to a taking and trespass in law. As, if a person with a drawn sword, or other circumstances of terror, indicating a felonious intent, beg alms of another, who gives it him through mistrust and apprehension of violence, the offence is the same, notwithstanding the pretence. So it is whether there were any weapon drawn or not; or whether it were an offensive weapon; or whether the person assaulted delivered his money upon the other's command, or afterwards gave it him upon his ceasing to use force, and asking it for alms; for the owner was put in fear by the assault, and there remained a reasonable ground for its continuance. (2 *East's P. C.* 711; 1 *Haw. c.* 34, *s.* 6; *Fost.* 128.)

The same rule holds, although the thing taken were not really within the original contemplation of the robber, nor the object of his pursuit at the time.

Blackham assaulted a woman with intent to commit a rape, and she without any demand from him offered him money, which the prisoner took and put into his pocket, but continued to treat her with violence, to effect his original purpose, till he was interrupted by the approach of another person. This was holden to be robbery by a considerable majority of the judges: for the woman, from violence and terror, occasioned by the prisoner's behaviour, and to redeem her chastity, offered the money, which it was clear she would not have given voluntarily; and the prisoner, by taking it, derived that advantage to himself from his felonious conduct; though his original intent was to commit a rape. (*R.* v. *Blackham*, *T. T.* 1787; 2 *East's P. C.* 711.)

During the riots in London, in the year 1780, a boy with a cockade in his hat knocked violently at the door of the prosecutor, Mahon, who thereupon opened it; and the boy said to him, "God bless your honour, remember the poor mob." Mahon told him to go along, on which he said, "Then I will go and fetch my captain." He went; and the mob, to the amount of 100, armed with sticks and whatever they could get, soon after came, headed by the prisoner, *Thomas Taplin*, on horseback, having his horse led by the same boy. On their coming up, the bystanders said, "You must give them money;" and the boy said, "Now I have brought my captain." *Mahon* then asked the prisoner, "How much?" who answered, "Half-a-crown, sir." On which *Mahon*, who had before only intended to give a shilling, gave the prisoner the half-a-crown. This was holden to be robbery. (*Taplin's case, O. B. June*, 1780, *cor. Nares, J.*, 2 *East's P. C.* 712.)

Another case of the like sort occurred, upon the trial of some of the rioters in the year 1780. The indictment was for robbing the prosecutor, *Daking*, in his dwelling-house; into which *Daking* swore that the prisoner, *William Brown*, and another man entered; and being asked by him what they wanted, *Brown* having a drawn sword in his hand, said

with an oath, "Put one shilling into my hat, or I have a party that can destroy your house presently:" on which the prosecutor gave him a shilling. Another witness present swore, that the prisoner also used the expression, that "if he (*Daking*) would keep the blood within his mouth, he must give the shilling." The offence was holden to be robbery. (*Brown's case, O. B. June*, 1780, *cor. Nares, J.*, 2 *East's P. C.* 731.)

1. *Offence of, &c.*

If persons who had formed part of a mob, obtain money from a party by advising him to give money to the mob, and be indicted for this as a robbery—the prosecutor, to show that this was not *bonâ fide* advice, may give evidence of demands of money made by the same mob at other places before and afterwards in the course of the same day, if any of the prisoners were present on those occasions. (*R.* v. *Winkworth*, 4 *C. & P.* 444.)

In *Simon's* case, it appeared that the prisoners took a bushel and a half of wheat, worth 8*s.*, and obliged the owner to take 13½*d.* for it, threatening to kill her if she refused; this was holden to be a robbery by all the judges, on a conference. (*R.* v. *Simmons, Cornwall Lent Assizes*, 1783, 2 *East's P. C.* 712.)

So, in *Spencer's* case, the prosecutor, *Anderton*, having in his possession corn belonging to other persons, the prisoner came to him, together with a mob marching in military order; and one of the mob said, that if he would not sell they would take it away; the prisoner said, that they would give 30*s* a load, and if he would not take that, they would take the corn away, on which the prosecutor sold that for 30*s.* which was worth 38*s.*: this was holden to be robbery, and the prisoner was convicted and executed. (*Spencer's case, York Summer Assizes*, 1783, *cor. Buller, J.*, 2 *East's P. C.* 712.)

No case, however, has gone further than that of *James* and *Ezekiel Astley*, who were indicted for robbing *Jonathan Grundy*. It appeared that the prisoners and a person unknown went to a public-house near Birmingham, during the time of the riots in 1792, which was three or four hundred yards from Mr. *G.*'s house, early in the morning, where one of them said that they were going up to Mr. *G.*'s house, "and if he did not turn out the whack, his house would be down by two o'clock in the morning;" on which the stranger observed that he himself would do it: that he was the head of the mob, and had three or four hundred men at command at any time; with other like discourse. They all departed towards Mr. *G.*'s house; but before they arrived there they saw his servant at a little distance from it, whom they accosted, *James Astley* telling him he was come as a friend to let Mr. *G.* know that this man (the stranger) was the head of the mob, and the first man who had entered all the places which were destroyed at Birmingham. They then, seeing Mr. *G.* come out of his house, pulled off their hats, and shouted "Church and King." Mr. *G.* did the same, advancing towards the prisoners in much alarm, when the stranger accosted him, saying, "I am come out of friendship to you, Mr. *G.*, to let you know your house is marked to come down to morrow morning at two o'clock. I am the head of the mob: they are two thousand strong in Birmingham. I must have something to make my men drink. I can bring two or three hundred in an hour's time, or keep them back." Mr. *G.* said, "As to something to drink, you shall have anything you have a mind for." The stranger said, "I must have money." Mr. *G.* pulled out half-a-crown from his pocket, and offered it to him: but the stranger refused it, and turned away with expressions of contempt. Mr. *G.* then asked what he wanted; the stranger replied, he must have twenty guineas; and on Mr. *G.* saying that he had not so much in his house, the other told him, that if he did not give him something handsome for his men to drink, his house should come down. Mr. *G.* said, that he might have nine or ten guineas, which the stranger asked to see: and as Mr. *G.* was taking his purse out of his pocket, *James Astley* told him he might depend upon it that the other man was at the head of the mob, and the like sort of discourse which had passed before concerning his power; particularly, that he was the first man who had entered every house that had been de-

I. *Offence of, &c.*

stroyed. Mr. G. was so struck with that expression, that he immediately took the money out of his purse (nine guineas and a half), which he gave to the stranger, who counted it, and demanded to have something to drink. They all then went into Mr. G.'s house, where they had liquor, and in going away assured him that he should be protected. Mr. G. said that he was greatly alarmed, but not for his person; that no injury was threatened to his person; that when he delivered his money his apprehension was, that if he had refused so to do, the prisoners would have gone to Birmingham, and have returned with other persons, and pulled down his house and plundered it before he could have removed his wife, who was in the house, in great agitation, as the prisoners had threatened, and in the same manner as different houses in Birmingham had been before pulled down It appeared that the prisoners had a small share of the money afterwards. It was objected on their behalf, that there was no evidence of robbery, inasmuch as the prosecutor did not deliver his money from any immediate fear of danger to himself or his property, but from an apprehension of future injury to his house by pulling it down. And the counsel for the crown admitting it to be a new case, *Grose*, J., proposed to have a special verdict found; but, on account of the prisoners' situation, it was agreed that the truth of the evidence should be left to the jury, and if they should find the prisoners guilty, the judgment should be respited, and the facts submitted to the judges for their opinion, whether the evidence amounted to robbery. The jury found the prisoners guilty; saying that they were satisfied that Mr. *Grundy* did not deliver his money from any apprehension of danger to his life or person, but from an apprehension that, if he refused, his house would at some future time be pulled down, as the prisoners and the stranger threatened, in the same manner as other houses in Birmingham had been before. In Michaelmas term, 1792, a majority of the judges held this to be robbery. (*R.* v. *J. Astley and E. Astley, Stafford Summer Assizes*, 1792, *cor. Grose, J.*, 2 *East's P. C.* 729.)

But, in *R.* v. *Wood and Knewland*, who, under pretence of an auction, got a woman into a house, and compelled her, by threats of carrying her before a magistrate and to prison, for not paying for a lot pretended to have been bid for by her, to pay them 1*s.* through fear of prison, and for the purpose of obtaining her liberty, but without fear of any other personal violence—this was holden to be duress, and not robbery. *Ashhurst*, J., in delivering the opinion of the judges, observed, that there was no reason for such a degree of terror in this case as to induce the prosecutrix to part with her money: she might have known that, having done no wrong, if she had been taken to prison, the law would have taken her under its protection, and set her free; and that the law did not allow the fear of being sent to prison to be a sufficient ground of terror to constitute a robbery.

Degree of fear.

Circumstances from which the court and jury may presume such a degree of apprehension of danger as would induce the prosecutor to part with his property, are sufficient to constitute fear. (*Fost.* 128.) Therefore, if a man knock another down, and steal from him his property whilst he is insensible on the ground, this is robbery. (*Fost.* 128.) A stage-coach having frequently been robbed on a particular road, J. N. went in it for the purpose of apprehending the robber. The robber met the coach, presented a pistol, and demanded money of the passengers; J. N. accordingly delivered his money, but immediately afterwards jumped out of the coach, and with the assistance of others, secured the robber: and this was holden to be robbery. (*Fost.* 129.) So, where the defendant tore a lady's ear through, in snatching an ear-ring from it, the judges held it to be robbery. (*R.* v. *Lapier*, 1 *Leach*, 320; *ante*, 777.) But merely snatching property from a person unawares, and running away with it, will not be robbery, because fear cannot, in fact, be presumed in such a case. (*Ante*, 777.)

Fear of loss of

The cases of robbery in which the property has been obtained by means

of a fear being excited of injury to *the character* of the party robbed, appear to be confined to insinuations against, or threats to destroy, the character of the party pillaged, by accusing him of sodomitical practices. The fears unavoidably excited by these means have, on several occasions, been determined by the judges to be sufficient to constitute the crime of robbery. The bare idea of being thought addicted to so odious and detestable a crime is, of itself, sufficient to deprive the injured person of all the comforts and advantages of society; a punishment more terrible, both in apprehension and reality, than even death itself. The law, therefore, considers the fear of losing character by such an imputation as equal to the fear of losing life itself, or of sustaining personal injury. (*Per Ashhurst, J.*, in delivering the opinion of the judges in *R.* v. *James Knewland and Nathaniel Wood, O. B. Feb. Ses.* 1796; 2 *Leach*, 730; *R.* v. *Jones* alias *Evans*, 1 *Leach*, 139; 2 *East's P. C.* 714, *S. C.*; *R.* v. *Robert Harrold*, 2 *East's P. C.* 715; *R.* v. *Donolly, O. B. Feb.* 1779, *cor. Buller, J.*, 2 *East's P. C.* 715; 1 *Leach*, 193; *Hickman's case, Old Bailey, July*, 1783, 2 *East's P. C.* 728; *R.* v. *Cannon, R. & R.* 146; *R.* v. *Egerton, R. & R.* 375.)

1. *Offence of, &c.*

character by threats to accuse another of an unnatural offence.

And now, by stat. 7 Will. IV. & 1 Vict. c. 87, s. 4, "Whosoever shall accuse or threaten to accuse any person of the abominable crime of buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent, in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years."

7 Will. IV. & 1 Vict. c. 87, s. 4.

It would seem that the term "threaten to accuse" is not confined to an accusation before a competent tribunal, and extends to a threat to accuse before any person. (*See R.* v. *Robinson*, 2 *M. & Rob.* 14; 2 *Lewin*, 273, *S. C.*)

A threat to procure witnesses to support a charge already made, is not a threatening to accuse. (*See R* v. *Gill*, 1 *Lew.* 305.)

Obtaining money by threatening to take another before a justice on a charge of an unnatural offence would be a robbery, though the prosecutor stated that he parted with his money under an idea of preserving his character, and not from fear of personal violence. (*R.* v. *Hickman, supra*; *R.* v. *Donolly, supra.*)

But parting with property upon the charge of an unnatural crime, will not make the taking a robbery, if it is parted with, not from fear of loss of character, but for the purpose of prosecuting. (*R.* v. *Fuller, R. & R.* 408; *R.* v. *Reane*, 2 *Leach*, 616.)

The intimidation must be on the mind of the person threatened to be accused; and, therefore, it is not robbery to obtain money from a woman under a threat of accusing her husband. (*R.* v. *Edward*, 1 *M. & Rob.* 257.)

It is equally a robbery to extort money from a person by threatening to accuse him of an unnatural crime, whether the party so threatened has been guilty of such crime or not. (*R.* v. *Gardner*, 1 *C. & P.* 479.)

Guilt of party threatened immaterial.

On the trial of an indictment under the above enactment for extorting money from a person by threatening to accuse him of an infamous crime, the jury need not confine themselves to expressions used before or at the time the money was given: but if these expressions are equivocal, may connect them with what was afterwards said by the prisoner when taken into custody. (*R.* v. *Robinson*, 2 *M. & Rob.* 14; 2 *Lew.* 273, *S. C.*)

If the property be not taken by actual violence, and the owner only deliver it in consequence of prior threats, such delivery must be enforced

Where no force, there must be terror in fact.

1. *Offence of, &c.*

by terror actually felt at the time, to constitute the crime; otherwise there is neither actual nor constructive violence in the taking, and, consequently no robbery. (2 *East's P. C.* 733.)

Fear after the taking not sufficient.

It is not enough that the fear arise after the property is taken. *Harman* being on horseback, desired *Halfpenny* to open a gap for him; and while he was so doing, *Harman* took the opportunity, unperceived, to pick his pocket of his purse. *Halfpenny*, turning round, and seeing the purse in *Harman's* hand, demanded it of him, who then menaced *Halfpenny* (in the manner before-mentioned), and went away with the purse. On an indictment for robbery, the prisoner was holden guilty of simple larceny only; the property being obtained by stealth, and not by violence or putting in fear; the words of menace being used after the taking. (*Harman's case, Hil.* 17 *Jac.* 2; *Roll. Rep.* 154; 1 *Hale*, 534; *and see R.* v. *Gnosil, ante*, 777.)

In the case of *Jackson and Shipley, Nottingham Spr. Ass.* 1802, before Mr. Baron *Graham*, it was decided, on a case reserved, that to constitute robbery by taking money from another upon a threat to charge him with an unnatural crime, the money must be taken *immediately* upon the threat made, and not after the parties have separated, and time for the prosecutor to deliberate and procure assistance, and especially after he had consulted a friend, who was even present at the time when the money was paid, though the prosecutor parted with his money from fear of losing his character. (*R.* v. *Jackson and Shipley*, 1 *East's P. C., Add. XXI.; and see R.* v. *Reane*, 2 *Leach*, 616; 1 *Russ. on Crimes*, 891, 3*rd ed.*)

II. Indictment for, and Trial of, &c.

Indictment for.

The venue must be laid in the county where the crime actually took place. (2 *Leach*, 634.) See, as to the venue in robbing the mail, *ante*, "*Post-Office*;" see also, as to the venue in cases where the place of committing the offence is doubtful, "*Indictment*," Vol. III.

The putting in fear need not be laid in the indictment, so that the fact be charged to be done violently and against the will of the party. (*R.* v. *Donolly, ante*, p. 781; *Fost.* 128; 1 *Hale*, 534.)

The term *violently* is not absolutely requisite, so that it otherwise appear violence was used. (2 *East's P. C.* 783.)

The assault must be laid to have been *feloniously* made. (2 *Leach*, 564; 1 *Russ.* 3*rd ed.* 902.)

Where several are jointly indicted under the 1 Vict. c. 87, s. 3, *post*, 783, it is not necessary to aver that they were together: but this is otherwise where only one of the party is indicted; in that case it ought to be alleged that he committed the offence together with others. (*R.* v. *Raffety*, 2 *Lew.* 271; *R.* v. *Doran, id.; and see* 1 *Russ. by Greaves*, 903, *n.*)

Since the stat. 7 Will. IV. & 1 Vict. c. 87, s. 4, *ante*, 781, where the property is obtained by any of the threats to accuse, specified in that section, the indictment must be on the statute and not for robbery: but where the property is obtained by threats to accuse other than those specified in the statute, the indictment may be for robbery, if the party was put in fear, and parted with his property in consequence. (*Reg.* v. *Norton*, 8 *Car. & P.* 671; *R.* v. *Henry*, 9 *C. & P.* 309; 2 *Moody, C. C.* 118, *S. C.; see* 1 *Russ. by Greaves*, 900, *n.*)

Formerly it was necessary to state correctly in the indictment whether the robbery was committed in or near the highway; but now, since the 3 Will. & M. c. 91, and 1 Vict. c. 87, this is no longer requisite. (*See* 1 *Russ.* 3*rd ed.* 904; *and the prior cases of R.* v. *Wardle, R. & R.* 9; *R.* v. *Pye, R. & R.* 9, 10, *n.*)

As to the mode of describing the goods, and the ownership of them, *see titles*, "*Indictment*," "*Larceny*," Vol. III. Where a servant who was sent by his master to receive money, was robbed of the money

on his return home, *Alderson*, B., doubted whether it could properly be described as the money of the master, and discharged the jury, that another indictment might be preferred. (*R.* v. *Rudick*, 8 *C. & P.* 237.) 2. *Indictment for, and Trial of, &c.*

The indictment for robbery need not conclude against the form of the statute, unless, perhaps, the robbery be of some security or chattel not the subject of larceny at common law. (*See* 1 *Russ.* 3*rd ed.* 902, 903; *R.* v. *Lennox*, 2 *Lew.* 268.)

On the trial, should it appear that any of the circumstances of robbery are wanting, but the taking is proved, the defendant may be acquitted of the aggravated offence, and found guilty of simple larceny. (*R.* v. *Francis*, *Rep. temp. Hardw.* 115; *Com. Rep.* 178; 2 *Stra.* 1014, *S. C.*)

So, if the defendant be indicted for robbery, he may be convicted under the 1 Vict. c. 85, s. 11, of an assault, though the jury find that prisoner had no intention to commit a robbery. (*R.* v. *Ellis*, 8 *C. & P.* 654.)

By 1 Vict. c. 87, s. 13, where any felony punishable under this act, shall be committed within the jurisdiction of the admiralty of England or of Ireland, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other felony committed within that jurisdiction. Offence in admiralty jurisdiction.

The offence is not triable at any quarter sessions. (5 & 6 Vict. c. 38, s. 1.) Not triable at sessions.

III. Punishment for, &c.

Robbery is generally visited with the heaviest punishment. (*See* 3 *Inst.* 68; 2 *Hale*, c. 48.) Punishment for.

7 Will. IV. & 1 Vict. c. 87, s. 2, enacts, "That whosoever shall rob any person, and at the time of, or immediately before, or immediately after such robbery shall stab, cut, or wound any person, shall be guilty of felony, and being convicted thereof, shall suffer death." Where a wounding.

As to recording the judgment of death, see the 4 Geo. IV. c. 48, s. 11, *title*, "*Judgment*," Vol. III.

Sect 3 enacts, "That whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall, together with one or more person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years." When attended with violence, or offender was armed.

Sect. 4, *ante*, 781, provides for a punishment where the robbery is by a threat of accusing another of an unnatural offence. Where a threat of accusing of an unnatural offence.

Sect. 5 enacts, "That whosoever shall rob any person, or shall steal any property from the person of another, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years nor less than ten years, or to be imprisoned for any term not exceeding three years." Robbery from the person generally.

Sect. 6 provides for the punishment in cases of assaults with intent to rob. (*See* "*Assault*," Vol. I.) Assault to rob.

Sect. 7 provides for the punishment of the offence of demanding money with menaces. (*See* "*Threats*," Vol. VI.) Demanding money with threats.

Sect. 9 enacts, "That in the case of every felony punishable under this act every principal in the second degree and every accessary before the fact shall be punishable with death or otherwise in the same manner as the principal in the first degree is by this act punishable; and every accessary after the fact to any felony punishable under this act (except only a receiver of stolen property) shall, on conviction, be liable to be imprisoned for any term not exceeding two years." Punishment of accessaries.

Sect. 10 enacts, "That where any person shall be convicted of any Offences punish-

3. *Punishment for, &c.*

able by imprisonment.

offence punishable under this act for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the court in its discretion shall seem meet."

IV. Accessaries.

Principal and accessary.

All that come in company to rob are principals, though one actually do it. (*Hale's Sum.* 72; 1 *Hale*, 534; 1 *Hawk. P. C. c.* 34, *s.* 5.) And the same rules which prevail in other cases of principal and accessary, apply also in the case of robbery. (1 *Russ. 3rd ed.* 200; *see* "*Accessary*," Vol. I.)

If a gang of poachers attack a gamekeeper, and leave him senseless on the ground, and one of them return and steal his money, &c., that one only can be convicted of the robbery, as it was not in pursuance of any common intent. (*R.* v. *Hawkins*, 3 *C.* & *P.* 392.)

Where several men by agreement rode out to commit robbery, and at Hounslow one of them parted from the company, and rode away towards Colnbrook, and the others rode towards Egham, and at the distance of about three miles from Hounslow committed a robbery; it was holden that the man who parted from the company was not guilty of this robbery, though he rode out with the others upon the same design, for he left them at Hounslow, and as he did not fall in with them afterwards, possibly he repented of the design, but at least he did not pursue it. (*Rex* v. *Hyde and others*, 1 *Hale*, 537, 538.)

As to the punishment of accessaries, *see ante*, 783.

V. What shall be done with the Goods of the Person robbed.

Restitution of goods taken by robbery.

If the person robbed do not prosecute the robber; unless his goods be waived in flight, or seized by the queen's officers, or lord of the manor, he shall not have them restored. (*Kel.* 49.)

But if they be not waived in flight, nor seized by the king's officers or the lord of the manor, he may take his goods again wherever he finds them, without the formality of restitution being awarded, if they be not sold in open market; and this, also, although he do not prosecute the robber. (*Kel.* 49.)

But if he shall prosecute the robber to conviction, he shall have restitution, although they have been waived, and seized, and even sold in open market. (*Kel.* 48.) See further, "*Larceny*," (*Restitution*,) Vol. III.

VI. Forms.

The form of a warrant for apprehending a robber upon fresh suit is inserted under the title of "*Hue and Cry*," Vol. III.

(1.) Commitment for robbery.

Commencement as usual, *ante*, p. 11.] *on the day of , A. D. , at the parish of , in the said county, in and upon* [*the said*] *A. B. feloniously did make an assault, and him the said A. B. in bodily fear and danger of his life feloniously did put, and* [*five pieces of the current gold coin of the realm, called sovereigns, and one gold watch of the value of £2*] *of the monies, goods, and chattels of the said A. B., from the person and against the will of the said A. B. feloniously and violently did steal, take, and carry away. And you the said keeper, &c.* [as usual, as *ante*, p. 11.]

(2.) Indictment for.

——— *to wit. The jurors for our lady the Queen upon their oath present, that A. O., late of the parish of , in the county of ,* [*labourer,*]

6. *Forms.*

on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, &c., at the parish aforesaid, in the county aforesaid, in and upon one A. B., in the peace of God, and of our said lady the Queen, then and there being, feloniously did make an assault, and him the said A. B. in bodily fear and danger of his life then and there feloniously did put, and [one gold watch, of the value of] of the goods and chattels of the said A. B., from the person and against the will of the said A. B., then and there feloniously and violently did steal, take, and carry away; against the peace of our said lady the Queen, her crown and dignity.* [Add other counts, as the case may suggest. If the property stolen be not the subject of larceny, such as "*valuable securities,*" conclude the indictment "*against the form of the statute in such case made and provided.*"]

(3.) The like when attended with a wounding of the person robbed, under 1 Vict. c. 87, s. 2.

Proceed as in the preceding form to the *, and then thus: *and one piece of the current gold coin of the realm called a sovereign, of the value of one pound, and ten pieces of the current silver coin of the realm called shillings, and one gold watch of the value of two pounds, of the monies, goods, and chattels of the said A. B., from the person and against the will of the said A. B., feloniously and violently did steal, take, and carry away; and that the said C. D., immediately before he so robbed the said A. B. as aforesaid, the said A. B. in and upon the right side of the said A. B. feloniously did stab, cut, and wound; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*

(4.) The like, under sect. 3, when attended with violence.

Proceed as in the preceding form, but substitute this for the allegation that the defendant stabbed, &c.:—"*and that the said C. D., immediately before he so robbed the said A. B. as aforesaid, him the said A. B. feloniously did strike and beat.*"

(5.) The like where the offender was armed.

This is like the form, *ante*, No. 2, but before the statement of the assault, say, "*being then and there armed with a certain offensive weapon and instrument, to wit, a bludgeon, in and upon one A. B. &c.*" and conclude thus: "*against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*"

(6.) The like, under sect. 4, where the robbery was by threat to accuse of an unnatural offence.

Commence as in the form, *ante*, No. 2, but state the offence thus: "*feloniously did accuse one A. B.* [or, *did threaten one A. B. to accuse him the said A. B.*] *of having* [here state the accusation or threat], *with the view and intent in so doing then and there and thereby to extort and gain from the said A. B., certain property of the said A. B.; and that the said C. D., by then and there intimidating the said A. B. by the said accusation* [or, *threat*] *as aforesaid, did then and there feloniously extort and gain from the said A. B. one piece of the current gold coin of the realm, called a sovereign, of the value of one pound* [describe the goods, monies or security obtained]; *against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*

(7.) Indictment for stealing from the person.

Commence as in the form, *ante*, No. 2]—*in the county aforesaid, one piece of the current gold coin of the realm, called a sovereign, of the value of one pound, of the monies, goods, and chattels of A. B., from the person of the said A. B. then and there feloniously did take, steal, and carry away; against the peace of our lady the Queen, her crown and dignity.* [If "valuable securities" be stolen, conclude "*against the form of the statute in such case made and provided.*"]

Rout. *See ante, "Riot."*

Rule of Court, *Proof, &c., of.* *See* "*Evidence,*" Vol. II. p. 395.

Rum. *See* "*Excise,*" Vol. II.

Run Goods. *See* "*Excise,*" Vol. II.

Sabbath. *See* "*Lord's Day,*" Vol. III.

Sacrilege.

Sacrilege.

By stat. 7 & 8 Geo. IV. c. 29, s. 10, "if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon." See the general clauses affecting all the provisions of the 7 & 8 Geo. IV. c. 29, *ante*, "*Larceny,*" Vol. III. Sect. 61 relates to principals in the second degree, and accessaries.

Punishment of death for, abolished.

By 5 & 6 Will. IV. c. 81, intituled "An Act for abolishing Capital Punishments in Cases of Letter-Stealing and Sacrilege," reciting the 30 Geo. III. c. 1, 52 Geo. III. c. 143, and part of 7 & 8 Geo. IV. c. 29, and 9 Geo. IV. c. 55, it is enacted, that "so much of each of the said acts as inflicts the punishment of death upon persons convicted of any of the offences therein and hereinbefore specified, shall be and the same is hereby repealed, and that from and after the passing of this act every person convicted of any of the offences in the said act so specified, or of aiding or abetting, counselling or procuring the commission thereof, shall be liable to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, in the common gaol or house of correction for any term not exceeding four years."

By 6 & 7 Will. IV. c. 4. intituled, "An Act to amend an Act of the last Session for abolishing Capital Punishments in Cases of Letter-Stealing and Sacrilege," reciting, that by the 5 & 6 Will. IV. c. 81, "the punishment of death was taken away in cases of letter-stealing and sacrilege; but by reason of a clerical error in copying the same a doubt may be entertained whether persons guilty of such offences are now by law liable to any punishment:" it is therefore enacted, "that the same shall be read as if, instead of the words 'in the said act so specified' the words 'in the said acts so specified' had been inserted in the said act of the last session; and that all persons who may hereafter be duly convicted of any of the offences mentioned in the said act of the last session shall and may be sentenced, by the court or judge by or before whom such offenders may be tried, to transportation for life or for any term of years not less than seven, or to be imprisoned for any term not exceeding three years, with or without hard labour, and for any period of solitary confinement during such imprisonment, at the discretion of such court or judge." *See* "*Hard Labour,*" Vol. III.

Punishment for.

By the 7 Will. IV. & 1 Vict. c. 90, s. 5, the solitary confinement shall not exceed one month at any time, nor three months in any one year.

Not triable at sessions.

The offence is not triable at any quarter sessions, 5 & 6 Vict. c. 38, s. 1.

What a church within the act.

If a church-tower be built higher than the church, and have a separate roof, but have no outer door, and be only accessible from the body of the church, from which it is not separated by any partition, this tower is a part

of the church, within the meaning of the 7 & 8 Geo. IV. c. 29. (*R.* v. *Wheeler and others*, 3 *C. & P.* 585.)

The vestry of a parish church was broken open and robbed. It was formed out of what before had been the church porch, but had a door opening into the church-yard, which could only be unlocked from the inside:—Held, that this vestry was part of the fabric of the church, and within the act. (*Reg.* v. *Evans*, 1 *Car. & M.* 298.)

The word "chapel" in the act has been construed not to apply to chapels of dissenters. Where the prisoner was indicted for breaking and entering a chapel, which appeared from the evidence to be a dissenting chapel—it was held by *Gaselee*, J., and *Vaughan*, B., that the statute applied only to chapels of the Church of England; because where the legislature meant to protect the chapels of dissenters, they expressly mentioned them, as in the stat. 7 & 8 Geo. IV. c. 30, s. 2. (*R.* v. *Warren*, 6 *C. & P.* 335, *n.*; *and see R.* v. *Richardson*, *id.*; *R.* v. *Nixon*, 7 *id.* 442.)

The statute is not confined to goods used for *divine service*; it extends to articles kept in the church to keep it in proper repair. And such goods will be under the protection of the statute whilst the church is under repair, unless they are brought in merely for the purpose of such repairs. (*R.* v. *Rourke*, *R. & R.* 386.) What goods within the act.

The word "chattel" in the act, does not mean a fixture, or anything annexed to the freehold. (*R.* v. *Nixon*, 7 *C. & P.* 442.)

As to the mode of describing the property and ownership, *see titles* "*Indictment*," "*Larceny*," Vol. III.; "*Burglary*," Vol. I. Ownership of property.

If a parish church be broken and entered, insert a count stating the chattel to be the chattel of the rector, and another stating it to be the chattel of the churchwardens, and another stating it to be the chattel of the parishioners. (*See* 1 *Hale*, 51; *Id.* 81; 2 *East*, *P. C.* 681; *Arch. C. L. by Jervis*, 9*th ed.* 238.)

It has been said, that he who takes away the goods of a chapel or abbey, in vacation time, may be indicted in the first case for stealing *bona capellæ* being in the custody of such and such; and in the second, for stealing *bona domûs et ecclesiæ*, &c. (1 *Hale*, 512; 1 *Russ.* 845, 3*rd. ed.*)

Goods in a dissenting chapel, vested in trustees, cannot be described as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep in order, though he has the key of the chapel, and no other person but the minister has another key. (*R.* v. *Hutchinson*, *R. & R.* 412.)

But where a prisoner was indicted for stealing a bible, a hymn book, and a pair of brass sconces, the property of J. B. "and others," which it appeared had been stolen from a methodist chapel at Fakenham, and the bible and hymn book had been presented to the society of methodists there, of which J. B. was one, and also a trustee of the chapel, but the trust deed was not produced; it was held by *Parke*, J., that as J. B. was one of the society, the property was well laid in him. (*R.* v. *Boulton*, 5 *C. & P.* 537.)

As to what will constitute a *breaking and entry*, *see* "*Burglary*," Vol. I. What a breaking.

As to what will constitute *stealing*, *see* "*Larceny*," Vol. III. What a stealing.

As to the *burning* of churches, *see* "*Burning*," Vol. I. Burning and other offences as to churches.

As to other offences relative to churches, *see* "*Church*," "*Common Prayer*," Vol. I.; and "*Lord's Day*," Vol. III.

Commencement as usual, as *ante*, p. 11.] *on the day of , A. D. , at the parish of , in the said county, the church of the parish of A. B.* [or, *a certain chapel*] *there situate, feloniously did break and enter; and* [*one silver dish, and one silver cup*, according to the fact], *of the chattels of* [*the parishioners*] *of the said parish* [see *supra*] *feloniously and sacrilegiously did steal, take, and carry away; against the form of the statute in that case made and provided. And you, the said keeper, &c.* [as usual, as *ante*, p. 11.] (1.) Commitment for breaking into a church, &c., and stealing therein.

(2.) Commitment for stealing in a church, &c., and breaking out of same.

Commencement as usual, as *ante*, p. 11.] *on the day of A. D. , at the parish of , in the said county,* [*one silver dish, and one silver cup*, according to the fact], *of the chattels of* [*the parishioners*] *of the said parish* [see *supra*], *in the church of the parish of, &c.* [or, *in a certain chapel,*] *there situate, feloniously and sacrilegiously did steal, take, and carry away, and the said C. D., being so as aforesaid in the said church* [or, *chapel*], *and having thereon so committed the said offence as aforesaid, on the same day and year aforesaid, feloniously did break out of the said church* [or, *chapel*]: *against the form of the statute in such case made and provided. And you, the said keeper, &c.* [Conclude as usual, as *ante*, p. 11.]

(3.) Indictment for sacrilege.

——— *to wit. The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, &c., at the parish aforesaid, in the county aforesaid, the church of the said parish* [or, *a certain chapel, called, &c.*], *there situate, feloniously did break and enter, and then and there in the said church* [or, *chapel*], [*one silver dish*] *of the value of 10l., and* [*one silver cup*] *of the value of 10l., of the chattels of* [*the parishioners*] *of the said parish* [see *supra*], *in the church* [or, *chapel*] *aforesaid, then and there being found, then and there feloniously and sacrilegiously did steal, take, and carry away: against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.* [Add other counts, as the case may suggest, and a count for stealing in a church and breaking out of it.]

Sailor. *See post*, "*Seamen.*"

Sales by Auction. *See* "*Excise,*" Vol. II.

Salmon. *See* "*Fish and Fisheries,*" Vol. III.

Salt. *See* "*Excise,*" Vol. II.

Salvage, *Provisions as to. See post*, "*Ships.*"

Schoolmasters.

HOW far schoolmasters, being protestant dissenters, are exempted, as such, from the penalties inflicted by the law for teaching school without licence, is treated of under the *title* "*Dissenters.*" Vol. I.

As to how far a schoolmaster may correct his scholar, *see* "*Assault,*" Vol. I. p. 284: "*Homicide,*" Vol. III.

Where a schoolmaster, in correcting his scholar, happens to occasion his death, if on such correction he be so barbarous as to exceed all bounds of moderation, he is at least guilty of manslaughter; and if he make use of an instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder. (1 *Haw. c.* 29, *s.* 5; *see further, title* "*Homicide,*" Vol. III.)

Scientific or Literary Societies.

By 6 & 7 Vict. c. 36, entitled "An Act to exempt from County, Borough, Parochial, and other local Rates, Lands, and Buildings, occupied by Scientific or Literary Societies," [28th July, 1843,] reciting that "it is expedient that societies established exclusively for purposes of science, literature, or the fine arts should be exempt from the charge of county, borough, parochial, and other local rates in respect of land and buildings occupied by them for the transaction of their business, and for carrying into effect their purposes;" it is enacted, "That from and after the first day of October, 1843, no person or persons shall be assessed or rated, or liable to be assessed or rated, or liable to pay, to any county, borough, parochial, or other local rates or cesses, in respect of any land, houses, or buildings, or parts of houses or buildings, belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes, provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money unto or between any of its members, and provided also that such society shall obtain the certificate of the barrister at law or lord advocate, as hereinafter mentioned."

6 & 7 Vict. c. 36.

Scientific societies exempted from rates upon obtaining the certificate hereinafter mentioned.

Sect. 2. "Provided always, and be it enacted, That before any society shall be entitled to the benefit of this act such society shall cause three copies of all laws, rules, and regulations for the management thereof, signed by the president or other chief officer and three members of the council or committee of management, and countersigned by the clerk or secretary of such society, to be submitted, in England, Wales, and Berwick-upon-Tweed, to the barrister at law for the time being appointed to certify the rules of friendly societies there, and in Scotland to the lord advocate, or any depute appointed by him to certify the rules of friendly societies there, and in Ireland to the barrister for the time being appointed to certify the rules of friendly societies there, for the purpose of ascertaining whether such society is entitled to the benefit of this act; and such barrister or lord advocate, as the case may be, shall give a certificate on each of the said copies that the society so applying is entitled to the benefit of this act, or shall state in writing the grounds on which such certificate is withheld; and one of such copies, when certified by such barrister or lord advocate, shall be returned to the society, another copy shall be retained by such barrister or lord advocate, and the other of such copies shall be transmitted by such barrister or lord advocate to the clerk of the peace for the borough or county where the land or buildings of such society in respect of which such exemption is claimed shall be situated, and shall by him be laid before the recorder or justices for such borough or county at the general quarter sessions, or adjournment thereof, held next after the time when such copy shall have been so certified, and transmitted to him as aforesaid, and the recorder or justices then and there present are hereby authorized and required, without motion, to allow and confirm the same; and such copy shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody, without fee or reward."

Scientific societies to cause three copies of their rules of management to be submitted to the barrister or person appointed to certify the rules of friendly societies, who shall certify thereon if entitled.

One certified copy to be returned to the society; one to be retained by the barrister; and the other transmitted to the clerk of the peace, for confirmation at sessions, and to be deposited.

Sect. 3. "That if the laws, rules, and regulations of any such society shall be altered, so as to affect or relate to the property or constitution of such society, such alterations shall, within one calendar month after the same shall have been made, be submitted to such barrister or lord advocate, and such barrister or lord advocate shall certify as aforesaid; and such rules, when so certified, shall be filed with the clerk of the peace as aforesaid; and in the meantime such society shall be entitled to the benefit of this act, as if no such alterations had been made: Provided always, that

Certain alterations made in the rules to be certified and deposited in like manner.

In case of re-

6 & 7 Vict. c. 36.

Refusal to certify.

if the said barrister or lord advocate shall refuse to certify, that then, subject to such appeal as is hereinafter provided, the said society shall cease to be entitled to the benefit of this act from the time when such alterations shall come into operation."

Fee to be paid to the barrister or lord advocate.

Sect. 4 provides and enacts, "That the fee payable to such barrister or lord advocate for perusing the laws, rules, and regulations of each society, or the alterations made therein, and giving such certificate or statement as aforesaid, shall not at any one time exceed the sum of one guinea, which, together with the expence of transmitting the rules to and from the said barrister or lord advocate, shall be defrayed by each society respectively."

Provision in cases where certificate is refused.

Sect. 5 provides and enacts, "That in case any such barrister or lord advocate shall refuse to certify that any such society is entitled to the benefit of this act, it shall then be lawful for any such society to submit the laws, rules, and regulations thereof to the court of quarter sessions for the borough or county where the land or buildings of the society shall be situated, together with the reasons so assigned by the said barrister or lord advocate as aforesaid; and the recorder or justices at such quarter sessions shall and may, if he or they think fit, order the same rules to be filed, notwithstanding such refusal as aforesaid; and such filing shall have the same effect as if the said barrister or lord advocate had certified as aforesaid."

Appeal to quarter sessions.

Sect. 6 provides and enacts, "That any person or persons assessed to any rate from which any society shall be exempted by this act may appeal from the decision of the said barrister or lord advocate in granting such certificate as aforesaid to the said court of quarter sessions, within four calendar months next after the first assessment of such rate made after such certificate shall have been filed as aforesaid, or within four calendar months next after the first assessment of such rate made after such exemption shall have been claimed by such society, such appellant first giving to the clerk or secretary of the society in question, twenty-one days previously to the sitting of the said court, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds thereof, and within four days after such notice entering into a recognizance before some justice, with two sufficient sureties, to try such appeal at and abide the order of and pay such costs as shall be awarded by the recorder or justices at such quarter sessions; and at such quarter sessions such recorder or justices shall, on its being proved that such notice and statement have been given as aforesaid, proceed to hear such appeal, according to the grounds set forth in such statement, and not otherwise, and, if the certificate of the said barrister or lord advocate shall appear to him or them to have been granted contrary to the provisions of this act, shall and may annul the same, and shall and may, according to their discretion, award such costs to the party appealing or appealed against as he or they shall think proper, and his or their determination concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever."

Scold. *See "Nuisance," ante.*

Scotland.

OFFENDER escaping into or out of, *see "Warrant,"* Vol. VI.
Scotch marriages, *see ante, "Polygamy,"* p. 612.
As to the trial of offences in, *see title "Indictment,"* Vol. III.

Sea.

See "*Admiralty*," Vol. I.; "*Fish*," Vol. III.; "*Rivers*," *ante*; "*Wreck*," Vol. VI.

As to destroying sea-banks, *see* "*Malicious Injuries to Property*," *ante*, p. 33.

Rights of the public on sea shore.

Where the public have the right of passing and repassing between the high and low water marks, as well over the water as the land, it seems that the obstruction of such a right will be a nuisance. (*Att. Gen.* v. *Burridge*, 10 *Price*, 350.) The question of the nuisance is a matter of fact. (*Id.*)

The crown may grant by letters patent to a corporation, a town and borough, being *caput portus*, as Portsmouth, all the land between the high and low water marks; but this subject-matter of grant, as being *jus privatum* in the queen, must be subject to the *jus publicum*, or public right of the queen and people to the easement of passing and repassing, both over the water and the land. (*Id.*)

Where a part of the sea-coast or shore, being the property of the crown, and giving *jus privatum* to the queen, is granted to a subject for uses, or to be enjoyed so as to be detrimental to the *jus publicum* therein, such grant is void as to such parts as are open to such objection, if acted upon so as to effect a nuisance by working injury to the public right, or it is a grant which does not divest the crown or invest the grantee. (*Att. Gen.* v. *Parmeter*, 10 *Price*, 378.)

Buildings, erections, and inclosures between the high and low water marks in the harbour of Portsmouth, interrupting the flux and reflux of the tide, were abated by decree of the court of Exchequer as a nuisance, where made under the sanction and authority of the corporation, having a grant from the crown by charter. (*Id.*)

The court of Exchequer may decree such an abatement. (*Id.*)

The queen's attorney-general, on the part of the crown, may proceed in such cases for the purpose of protecting either the *jus privatum* of the queen from the purpresture, or the *jus publicatum* of the subject from nuisance, by information on the queen's remembrancer's side of the Exchequer, or by English bill, praying a personal decree against the defendants in the suit. (*Id.*)

As to the public right to bathe in the sea, *see* "*Bathing*," Vol. I.

Trespass for breaking and entering the plaintiff's close. Plea of justification, that the close was the sea-shore, and that all the subjects of the king had the right to enter and carry away the sea-weed left by the tide, and that the defendant being such subject entered. Replication, that every subject had not, nor had the defendant the right:—*Held*, that the replication was bad, either because it amounted to a traverse of matter of law, or else, if not, was argumentative and double, as tendering two issues of fact. Held also, that the plea was bad, for there is not at common law a general right in the public of entering the sea-shore for the purpose of taking sea-weed. (*Howe* v. *Stowell*, 1 *Alcock & Napier*, 348.) (*Irish.*)

A custom for the inhabitants of a parish to take from a private close which adjoins the sea, and drifted there, for manure, amounts to a custom to take profits *in alieno solo*, and is bad. Such a right cannot be claimed by custom. (*Blewitt* v. *Tregonning*, 1 *Harr. & W.* 431; 5 *N. & M.* 234; 3 *A. & Ell.* 554, *S. C.*)

If the sea or an arm of it by gradual and imperceptible progress encroach upon the land of a subject, the land thereby covered with water belongs to the crown. (*Re Hull and Selby Railway*, 5 *M. & W.* 327.)

Rights of private individuals on sea shore.

Lands formed by alluvion, that is, by gradual and imperceptible deposit on the shore of the sea, belong to the owners of the adjoining demesne lands, and not to the queen *jure coronæ*. (*R.* v. *Yarborough, Lord*, 2 *Bligh, N. S.* 147; 1 *Dow. N. S.* 178; 5 *Bing.* 163; 7 *D. & R.* 790; 3 *B. & C.* 91.)

Where the lord of a manor acquired a piece of land which had been formed by ooze and soil deposited by the sea upon the extremity of his demesne lands, and it appeared that the increase could not be observed when actually going on, although a visible increase took place every year, and in the course of fifty years a large piece of land had been thus formed; and upon an inquest finding that the land had been left by the sea, and an issue taken upon a traverse to that finding, the verdict was for the defendant:—Held, that the crown was not entitled to judgment. (*Id.*)

A grant of lands to be recovered from the sea, must be reduced into possession within a reasonable time. (*Att. Gen.* v. *Richards*, 2 *Anst.* 614.)

By act of parliament, reciting that a certain tract of land daily overflowed by the sea, and to which the king in right of his crown claimed title, might be rendered productive if embanked, and that his majesty had consented to such embankment, a part of the said land, called Lipson Bay, was granted to a company for that purpose. On one side of the bay was the northern side of an estate called Lipson Ground, forming an irregular declivity, in parts perpendicular and in parts sloping down to the sea-shore, and overgrown with brushwood and old trees. The company, in embanking the bay, made a drain on this side in the same direction with the cliff, cutting through it in parts, but leaving several recesses of small extent between the projecting points. These recesses used to be overspread with sea-weed and beach, and were covered by the high water of the ordinary spring tides, but not by the medium tides:—Held, in the absence of proof as to acts of ownership, that the soil of these recesses must be presumed to have belonged to the owner of the adjoining estate and not to the crown, and did not therefore pass to the embankment company by the act of parliament. (*Lowe* v. *Govett*, 3 *B. & Adol.* 862.)

The lord of the manor, by lease and release, bargained and sold certain sea-grounds, oyster-layings, shores, and fisheries, extending from the south at low water mark to north at high water mark, and containing in the whole by estimation 800 acres of land covered with water or thereabouts, as the same are beaconed, marked, and stubbed out; since the date of the deed the sea had imperceptibly encroached upon the land, and the high and low water marks had varied in the same proportion:—Held, that so much of the soil of the shore as from time to time lay between high and low water mark, had passed to the grantee under this deed. (*Scratton* v. *Brown*, 6 *D. & R.* 536; 4 *B. & C.* 485, *S. C.*)

A grant of wreck from Hen. II. to the abbey of C. upon all their lands by the sea, confirmed by inspeximus by Hen. VIII., and a subsequent grant by him of the island of B. and its shores belonging to the late abbey of C., supported by evidence, that between forty and fifty years ago the proprietor of the island of B. raised an embankment across a small bay, and had ever since asserted an exclusive right to the soil without opposition:—Held, that although the usage of forty years' duration could not of itself establish such exclusive right or destroy the rights of the public, yet that it was evidence from which prior usage to the same effect might be presumed, and which, coupled with the general words contained in those grants, served to establish such right. (*Chad* v. *Tilsed*, 5 *Moore*, 185; 2 *B. & B.* 403, *S. C.*)

So where the lessees of a fishery had publicly landed their nets on the shore at A. for more than twenty years, and had frequently repaired the landing-place, although both the fishery and landing-place had originally belonged to one person; but no evidence was offered in an action for the disturbance of the lessor's rights, to show that he, or those who owned

the shore at A. under him, knew of the lessees of the fishery landing their nets there:—Held, that it was properly left to the jury to presume a grant of the right of landing to the lessees by some former owner of the shore at A. (*Gray* v. *Bond*, 5 *Moore*, 527; 2 *B. & B.* 667, *S. C.*)

Sea walls and banks.

Persons occupying lands adjoining the sea, may erect such defences as are necessary for the preservation of their own lands, although such erections may render it necessary for their neighbours to do the like. (*R.* v. *Pagham, Commissioners*, 2 *M. & R.* 468; 8 *B. & C.* 355, *S. C.*)

So commissioners of sewers for certain levels for the preservation of certain lands within the levels. (*Id.*)

And no obligation arises to erect works for the protection of such neighbours, nor to indemnify them against loss. (*Id.*)

A liability may exist at law to repair sea-walls *ratione tenuræ*, even though the damage may be occasioned by tempest, without any default in the obligor. (*Reg.* v. *Leigh*, 2 *Per. & D.* 357; 10 *A. & El.* 398, *S. C.*)

Semble, such liability is only limited by the ability of the party liable, or the value of the lands granted. (*Id.*)

To prove the liability of the defendant to repair a sea-wall *ratione tenuræ*, minutes of the court of sewers, commencing seventy years back, containing orders on the then holders of the estate to repair the wall in question, were held admissible. (*Id.*)

If a sea-bank or wall which the owners of particular lands are bound to repair, be destroyed by tempest without any default of such owners, the commissioners of sewers may order a new one (even in a different form, if necessary,) to be erected at the expence of the whole level. (*R.* v. *Somerset, Commissioners of Sewers*, 8 *T. R.* 312.)

A rule obtained by the conservators of the Bedford Level for a *mandamus*, to parties liable *ratione tenuræ* to repair the banks of the Ouse, was discharged on a preliminary objection, that by 15 Car. II. c. 17, the applicants were commissioners of sewers, and might therefore put in force against the parties another remedy. (*Reg.* v. *Gamble*, 3 *Per. & D.* 122; 11 *Ad. & E.* 69, *S. C.*)

Where the owner of marsh lands was bound by the custom of a sewage-level to repair the sea walls abutting on his own land, and by an extraordinary flood-tide the wall was damaged, the court refused to grant a *mandamus* to the commissioners of sewers to reimburse him the expence of the repairs, it appearing by affidavit that the wall had been previously presented for being in bad repair, and was out of repair at the time the accident happened, nor can the other land-owners in the level be called upon to contribute to the repairs of such wall. (*R.* v. *Essex, Commissioners of Sewers*, 2 *D. & R.* 700; 1 *B. & C.* 477, *S. C.*)

An individual who had suffered loss in consequence of decay of sea-walls, which a corporation is directed to repair under the terms of a grant from the crown, conveying a borough and pier or quay tolls to the corporation for damages. (*Lyme, Mayor, &c.*, v. *Henley*, 3 *B. & Adol.* 77; 5 *Bing.* 91, *S. C.*)

So as the obligation concerns the public, an indictment would lie for the general default. (*Id.*)

So when the obligation arises from prescription. (*Lynn, Mayor*, v. *Turner*, *Cowp.* 86; *S. P. Anon. Lofft.* 556.)

By letters patent king Charles the First granted to the mayor and burgesses of Lyme Regis the borough or town so called, and also the pier, quay, or cob, with all liberties and profits, &c. belonging to the same, and remitted also a rent of twenty-seven marks anciently payable by the corporation to the king; and the king willed that the said mayor and burgesses, and their successors, all and singular the buildings, banks, sea-shores, &c. within the said borough or thereto belonging, or situate between the same and the sea; and also the said pier, &c., at their own costs and charges, thenceforth for ever should repair, maintain, and support, as often as it should be necessary:—Held, that the corporation having accepted the charter, became bound to repair the buildings, banks, sea-

shores, &c; and that they were liable in an action on the case, at the suit of an individual, for an injury resulting from their neglect to discharge this duty. (*Lyme Regis, Mayor*, v. *Henley*, 1 *Scott*, 29; 1 *Bing. N. R.* 222, *S. C.*)

By an act for improving the town of Brighton, and preserving the adjacent coast from the incursions of the sea, the commissioners therein named were empowered to collect any rate or duty which they should think fit to order, not exceeding the sum of 3s. for every chaldron of coals landed on the beach, or in any other manner brought or delivered within the limits of the town. And where a declaration in debt for duties under this statute, alleged that the defendant on divers days and times, between, &c., brought and delivered within the town divers large quantities, in the whole amounting to a large quantity, to wit, sixty-eight chaldrons and four bushels of coals, in quantities on each of the said days and times less than one chaldron:—Held, that the duty attached, though the defendant did not bring into the town at any one time a quantity amounting to a chaldron:—Held also, that the defendant might take judgment for the sixty-eight chaldrons, and enter a remittitur for the residue. (*Mills* v. *Funnel*, 4 *D. & R.* 561; 2 *B. & C.* 899, *S. C.*)

Seamen.

As to impressing seamen, *see* "*Impressment*," Vol. III.

As to servants in general, and disputes between bargemen, &c. and owners of ships, &c. on the Thames, *see* "*Servant*," *post*.

As to the captain's right to correct a seaman, *see* "*Assault*," Vol. I. p. 284; *and post*, "*Servants*."

As to offences and regulations relative to ships in general, *see* "*Ships*," *post*.

As to offences relative to wrecks, *see* "*Wrecks*," *post*.

As to enlisting in foreign service, *see* "*Foreign Service*," Vol. III.

As to the trials of offences abroad, *see* "*Admiralty*," Vol. I.

As to seamen begging, see 43 Geo. III. c. 62, "*Military Law*," *ante*.

As to assaulting commanders to prevent them fighting, *see ante*, "*Piracy*."

Herein of—

I. *Royal Navy and Marines*, p. 794.

II. *Merchant Service*, p. 799.

III. *Assaulting Seamen to prevent them working*, p. 831.

IV. *Forms*, p. 836.

I. Royal Navy and Marines.

Seducing them from their allegiance.

By 57 Geo. III. c. 70, (made perpetual by 57 Geo. III. c. 7,) any person who shall maliciously and advisedly endeavour to seduce any person serving in his majesty's forces by sea or land, from his duty and allegiance to his majesty, or to incite or stir up any such person to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, by 7 Will. IV. & 1 Vict. c. 91, ss. 1, 2, is punishable with transportation for life, or not less than fifteen years, or imprisonment with or without hard labour and solitary confinement.

What offences

By the 22 Geo. II. c. 33, s. 4, no court martial may punish or try any

offence committed by any seaman in his majesty's service, which shall not be committed on the main sea, or in great rivers beneath the bridges, or in a haven or creek within the jurisdiction of the admiralty; except in the case of spies, or of mutiny and desertion, or disobedience, or of offences committed on land in foreign countries.

1. *Royal Navy and Marines.*

The court martial may punish.

A purser in the navy is liable, by the 22 Geo. II. c. 33, to be tried by a court martial for fraudulently and unlawfully charging blankets against seamen to whom none had been issued, and of making, in order to such charge, certain false entries in one of the ship's books, that being within the 36th article of war, an offence not capital, committed by a person in the fleet, not before mentioned in the act, and for which no punishment is thereby directed to be inflicted. (*Mann* v. *Owen*, 9 *B. & C.* 595.)

Convicted of swearing.

By the 19 Geo. II. c. 21. s. 5, a seaman, instead of being committed to the house of correction for default of paying the penalty for swearing, shall be put in the stocks for one hour for every single offence, and for any number of offences of which he shall be convicted at one and the same time, two hours. (*See ante*, "*Blasphemy*," Vol. I.; *and post*, "*Swearing*.")

Drunkenness.

As to drunkenness, *see* "*Alehouses*," Vol. I.

11 Geo. IV. & 1 Will. IV. c. 20.

Forging tickets &c. relative to the pay of the navy.

The 11 Geo. IV. & 1 Will. IV. c. 20, "An Act to amend and consolidate the Laws relating to the pay of the Royal Navy," sect. 83, enacts, that "If any person shall forge, or offer, utter, dispose of, or put off, knowing the same to be forged, any ticket, pay list, extract from any ship's books, or any certificate whatever authorized or required by this act, or any inspector's or other cheque, or any letter of attorney, assignment, power, or authority, in order to obtain or to enable any other person to receive any wages, pay, half pay, prize money, bounty money, or other allowance of money due or supposed to be due in respect of the services of any commission, warrant, or petty officer, or seaman, or any commission or non-commissioned officer of marines or marine, or any other person, performed or supposed to be performed in the royal navy; or if any person shall forge, or offer, utter, dispose of, or put off, any purser's or other certificate to a bill of exchange, or any approval of any such bill, respectively required by this act; or if any person shall forge, or offer, or utter or put off, knowing the same to be forged, any receipt for wages payable under allotment or otherwise in respect of the services of any person on board any of his majesty's ships, or shall forge the name or handwriting of any officer of the royal navy or royal marines to any receipt for half pay or arrears of half pay, or the name or handwriting of any widow to any receipt for any pension or arrears of pension, or the name or handwriting of any person to any receipt for an allowance from the compassionate fund of the navy; or shall offer, utter, dispose of, or put off any forged receipt for half pay or arrears of half pay, or for any widow's pension or arrears of such pension, or for any allowance from the compassionate fund, knowing any such receipt to be forged, with intent in any of the said cases to defraud any person whomsoever; every person so offending shall be deemed guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Punishment for personating any officer, &c.

Sect. 84. "If any person shall falsely and deceitfully personate any commission, warrant, or petty officer, or seaman, or commission or non-commissioned officer of marines or marine, or the wife, widow, or relation, executor, administrator, or creditor of any such officer, seaman, or marine, or any person entitled to any allowance from the compassionate fund of the navy, in order to receive any wages, pay, half pay, prize money, bounty money, pension, or any part thereof, gratuity or other allowance for money due or payable, or supposed to be due or payable, to any such officer, seaman, or marine, or to the wife or widow, relation, executor, administrator, or creditor of any such deceased officer, seaman, or marine, or any allowance to any person from the said compassionate fund, with

1. *Royal Navy and Marines.*

11 Geo. IV & 1 Will. IV. c. 20.

intent to defraud any person whomsoever, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

The personating must it seems be of some seaman, &c. proved to have been in existence in order to constitute it an offence within the act. (*See R.* v. *Brown*, 2 *East, P. C., c.* 20, *p.* 1007.)

But personating and assuming the name of a person who is dead, would it seems be within it. (*R.* v. *Martin, R. & R.* 324.)

Where an indictment on the 57 Geo. III. c. 127, s. 4, charged the prisoner with having wilfully and knowingly personated and falsely assumed the name and character of Peter M'Cann, a person entitled to prize money, in order to receive such prize money, with intent to defraud the commissioners and governors of the royal hospital for seamen at Greenwich, and a second count described the said Peter M'Cann as a person "supposed to be entitled," &c. for services "supposed to have been performed;" and upon the evidence, it appeared by the prize-list and muster-book, that there was a person of the name of *Peter M'Cann*, entitled to prize money, but no person of the name of *Peter M'Conn*; it was considered by the twelve judges that the variance was fatal. (*R.* v. *Tannett, Kent Lent Ass.* 1818 - 3 *Stark. Evid.* 1578, 56; *R. & R.* 351, *S. C.*)

All persons aiding and abetting the personating of seamen were held principals within that act, and the offence was not confined to the person only who personates the seaman. (*R.* v. *Potts, alias Dangreen, R. & R.* 353.)

Punishment for taking a false oath in order to obtain probate, &c.

Sect. 85. "If any person shall fraudulently and deceitfully take a false oath, in order to obtain probate of any will or letters of administration of the effects of any deceased commission, warrant, or petty officer, or seaman, or commission or non-commissioned officer of marines or marine; or if any person shall fraudulently receive or demand any wages, pay, prize money, bounty money, pension, or any part thereof, or any allowance of money whatever, payable or supposed to be payable in respect of the services of any such officer, seaman, or marine, or from the compassionate fund of the navy, or any pension to the widow of an officer, upon or by virtue of any probate of a will or letters of administration, knowing such will to be forged, or such probate or letters of administration to have been obtained by means of a false oath, with intent in any of the said cases to defraud any person whomsoever, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Punishment for subscribing false petition.

Sect. 86. "If any person shall subscribe any false petition or application to the treasurer of his majesty's navy or to the paymaster of royal marines, falsely and deceitfully representing herself or himself therein to be the widow, executor, nearest or one of the nearest of kindred of any deceased commission or warrant officer of the navy, or commission officer of marines, or of any petty officer or seaman, non-commissioned officer of marines or marine, or shall utter or publish any such petition or application, knowing the same to be false, in order to procure, or to enable any other person to procure, a certificate from the said inspector of seamen's wills or from the paymaster of royal marines as hereinbefore respectively provided, thereby to obtain, or to enable any other person to obtain, without probate or letters of administration, payment of any wages, pay, half pay, or pension, or any allowance from the compassionate fund of the navy, or payment of any wages, prize money, or allowances payable in respect of the services of any officer, seaman, or marine in the royal navy, or thereby to obtain, or to enable any other person to obtain, probate of the will or letters of administration of the effects of any deceased petty officer, seaman, non-commissioned officer of marines or marine; or if any person shall receive

1. *Royal Navy and Marines.*

11 Geo. IV. & 1 Will. IV. c. 20.

or demand any wages, pay, half pay, prize money, bounty money, pension, or arrears thereof, or any other allowance due or payable in respect of the services of any commission or warrant officer of the navy, or commission officer of royal marines, or of any petty officer, seaman, non-commissioned officer of marines or marine, upon or by virtue of any certificate of the inspector of seamen's wills or paymaster of royal marines respectively as aforesaid, knowing any such certificate to have been obtained by any false representation or pretence; every such offender shall be deemed guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

Punishment for forging certificates, &c., or uttering false vouchers;

Sect. 87. "If any person shall forge, or shall utter, offer, or exhibit, knowing the same to be forged, any paper writing purporting to be an extract from any register of marriage, baptism, or burial, or any certificate of marriage, baptism, or burial, in order to sustain any claim to any wages, prize money, or other monies due or payable in respect of the services of any officer, seaman, or marine in his majesty's navy, or to sustain any claim to any half pay payable to an officer of the royal navy or marines, or to any pension as the widow of an officer, or to any payment or allowance from the compassionate fund of the navy, or to any gratuity or bounty of his majesty given to the relatives of persons slain in fight with the enemy; or if any person shall make any false affidavit, or utter or exhibit any false affidavit, certificate, or other voucher or document, in order fraudulently to procure any person to be admitted a pensioner as the widow of an officer of the royal navy, or in order to sustain any claim to any wages, prize money, or other monies, or to any half pay or pension, or arrears thereof, or any allowance from the compassionate fund of the navy, or to any gratuity or bounty as aforesaid, with intent to defraud any person whomsoever; every person in any of the said cases offending shall be deemed guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years and not less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

or uttering any false affidavit.

As to principals in the second degree, and accessaries.

Sect. 88. "In the case of every offence made felony by this act, every principal in the second degree and every accessary before the fact shall be punishable in the same manner as the principal in the first degree is by this act punishable; and every accessary after the fact to any such felony shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and that where any person shall be convicted of any offence punishable under this act for which imprisonment shall or may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, as to the court in its discretion shall seem meet." [*See* 7 Will. IV. & 1 Vict. c. 90, s. 1.]

Punishment of petty officers, &c. attempting to obtain their pay by means of false certificates.

Sect. 89. "If any petty officer or seaman, non-commissioned officer of marines or marine, shall obtain or attempt to obtain his pay, or any part thereof, upon or by means of any false or forged certificate purporting to be a certificate of service in or discharge from any of his majesty's ships, or from any hospital or sick quarters, every person so offending shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to such pains and penalties as persons convicted of wilful and corrupt perjury are by law liable to."

False oath or affirmation punishable as perjury.

Sect. 90. "If any person shall take a false oath or make false affirmation in any case wherein an oath or affirmation is authorized or required by this act to be taken or made, and for which no punishment is otherwise by this act provided, every such person, being thereof duly convicted, shall be liable to such pains and penalties as persons guilty of wilful and corrupt perjury are by law subject to."

1. *Royal Navy and Marines.*

11 Geo. IV. & 1 Will. IV. c. 20.

Recovery and application of penalties.

Sect. 91. "All pecuniary penalties exceeding twenty pounds imposed by this act shall and may be recovered, with full costs of suit in any of his majesty's courts of record at Westminster or Dublin, either by information in the name of his majesty's attorney general, or in the court of session in Scotland by his majesty's advocate, or by action of debt in the name of any person who may sue for the same; and that all penalties not exceeding twenty pounds shall and may be recovered before any justice of the peace in any part of the United Kingdom in the same manner in all respects as is provided by two several acts passed in the third and fifth years of the reign of his present majesty, for the recovery of penalties by summary proceeding before justices of the peace; and that one moiety of all such penalties, when recovered, shall be to the informer, and the other moiety shall be paid over to the treasurer of the navy, for his majesty's use."

Treasurer and commissioners of the navy to act as justices.

Sect. 92. "And for the more speedy and effectual bringing to justice persons who shall commit any offence against the provisions of this act, be it further enacted, that it shall be lawful for the treasurer and the commissioners of the navy for the time being, or any one of them, and they are hereby respectively authorized and empowered, from time to time, in all places whatever, to execute the office and duty of a justice and justices of the peace in causing any person charged with any of the offences mentioned in this act to be apprehended, committed, and effectually prosecuted for the same; and all constables, headboroughs, keepers of gaols and prisons, and all other officers whatever, shall and they are hereby respectively required from time to time diligently to execute and obey all such warrants as shall be made, directed, or given to them, or any of them, by any one or more of the parties aforesaid, touching any of the matters and things hereinbefore contained; and all the laws made or to be made for the ease, safety, and protection of justices of the peace in the execution of their office, shall extend to the treasurer and commissioners of his majesty's navy respectively acting in the execution of this act, and to all constables and headboroughs or other peace officers or persons acting under the warrant or authority of the said treasurer or commissioners, or any of them, as fully and effectually, to all intents and purposes, as if the same were herein and hereby repeated and re-enacted."

Will. IV. c. 40.

Forging certificates, and for false oaths, relative to the civil department of the navy.

The 2 Will. IV. c. 40, intituled "An Act to amend the Laws relating to the Business of the Civil Departments of the Navy, and to make other Regulations for more effectually carrying on the Duties of the said Departments," [1st June, 1832,] sect. 32, enacts, "That if any person shall forge or falsely make any certificate to be given under the authority of this act by the commissioners for executing the office of lord high admiral, or any of them, or by any superintendent, of the purchase or sale of any naval or victualling stores, or shall utter or publish any false or altered certificate of any such purchase or sale, knowing the same to be false; or if any person shall take a false oath, or make a false affirmation, or give false evidence before any commissioner or commissioners for executing the office of lord high admiral aforesaid, or before any superintendent or inspector of seamen's wills, touching any matter which the said commissioners or any of them, or any superintendent or inspector, are or is authorized to inquire into; every such person, being duly convicted of any such offence or offences, shall be liable to suffer such punishment, pains, and penalties as persons guilty of wilful and corrupt perjury are by law subject to."

Sending false petitions to obtain the inspector's certificate.

Sect. 33. "The petition for probate of will or letters of administration of the effects of any deceased petty officer or seaman, or non-commissioned officer of marines or marine, or for obtaining a check or certificate in lieu of probate or letters of administration, in cases of claims where the deceased's assets shall not exceed thirty-two pounds and twenty pounds respectively, shall be addressed to the inspector of seamen's wills, and shall be forwarded to the secretary of the admiralty; and if any person shall

subscribe, transmit, utter, or publish any false petition, or application to the said inspector, knowing the same to be false, in order to obtain or to enable any other person to obtain any check or certificate in lieu of probate or letters of administration as aforesaid, every person so offending shall be deemed guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

1. *Royal Navy and Marines.*

2 Will. IV. c. 40.

Sect. 34. "'And whereas by an act of the thirty-ninth and fortieth years of his late majesty king George the Third, for the better preventing the embezzlement of his majesty's naval, ordnance, and victualling stores, certain rewards of twenty pounds and five pounds are directed to be paid in the respective cases therein mentioned, for the discovery of offences relating to such stores, and it is expedient that the amount of the said rewards should be reduced;' be it therefore further enacted, That upon convictions of persons for any offence touching his majesty's naval, ordnance, or victualling stores, to be discovered after the passing of this act, the payment of rewards shall be in the discretion of the commissioners for executing the office of lord high admiral aforesaid, or of the master general and principal officers of the ordnance, as the case may be; and that instead of the rewards of 20*l.* and 5*l.* respectively payable under the said act, the rewards following shall be paid; (that is to say,) any sum not exceeding 10*l.* upon convictions in prosecutions by indictment, and not exceeding 50*s.* upon summary convictions in the respective cases mentioned in the said act; and that no reward shall be payable in cases where the fine inflicted on the offender shall amount to 20*l.*, unless such fine shall fail to be paid as provided in the said act; and that it shall be lawful to mitigate the pecuniary penalty of 10*l.*, in cases of summary convictions, to any sum not less than 40*s.*" (*See, post*, "*Stores.*")

Rewards payable on the discovery of offences relative to naval stores reduced.

The 5 & 6 Will. IV. c. 24, intituled "An Act for the Encouragement of the voluntary Enlistment of Seamen, and to make Regulations for more effectually managing his Majesty's Navy," sect. 3, enacts, "And in order to prevent as far as may be frauds and impositions with respect to protections, be it further enacted, That if any person shall forge or counterfeit any certificate of service in his majesty's navy, or any instrument purporting to be a protection from such service, or shall fraudulently utter or publish any forged certificate of such service, or any forged instrument purporting to be a protection from such service, knowing the same to be forged, or shall fraudulently alter any certificate or protection which shall have been duly granted or issued; or if any person shall forge or fraudulently alter any extract from a baptismal register, or shall knowingly utter any false or fraudulently altered extract from a baptismal register, or any false affidavit, certificate, or other document, in order to obtain from the admiralty office a protection from his majesty's naval service for himself or any other person; or if any person, being in the possession of a protection, shall lend, sell, or dispose thereof to any other person, in order fraudulently to enable such other person to make an unlawful use of the same; or if any person shall produce, utter, or make use of as a protection for himself any protection which shall have been made out or issued for any other individual; every person in any such manner offending shall be deemed guilty of a misdemeanor, and such protection shall thenceforward be null and void."

5 & 6 Will. IV. c. 24.

Forging certificates, &c. of service, &c.

II. Seamen in Merchant Service.

As to the right of a master to correct a seaman, *see* "*Assault*," Vol. I. p. 284; *post*, "*Servants.*" (*R.* v. *Leggett*, 8 *C. & P.* 191.)

Statutes as to.

The recent statute of 7 & 8 Vict. c. 112 (which comes into force on the 1st of January 1845) after repealing the 5 & 6 Will. IV. c. 19, except so

2. *Merchant's Service.*

far as it relates to the establishment of the General Registry Office for Seamen, has consolidated the various prior statutes on the subject of merchant seamen, and enacted several new provisions. Amongst these will be found that of empowering justices of the peace to adjudge summarily upon claims for wages of merchant seamen not exceeding 20*l.*, which claims were formerly enforceable only by action in the superior courts or suit in the admiralty court. New provisions are made as to the apprenticeship of youths to the merchant service. By the 43rd section, justices are empowered to determine complaints between masters and apprentices. By the 44th section, also, a remedy before two justices of the peace is given in case of assault and battery on board a merchant ship. The act also contains a variety of other new and important provisions for the encouragement and protection of this useful class of persons.

The recent statute of 4 & 5 Will. IV. c. 52, also contains some important provisions relative to the support and relief of these persons and their widows and children, in case of their death, and imposes penalties in many cases recoverable before magistrates.

We will proceed to set forth the enactments of these statutes.

4 & 5 Will. IV. c. 52.

By the 4 & 5 Will. IV. c. 52, intituled "An Act to amend an Act of the Twentieth Year of his Majesty King George the Second, for the Relief and Support of sick, maimed, and disabled Seamen, and the Widows and Children of such as shall be killed, slain, or drowned in the Merchant Service; and for other Purposes," [13th August, 1834,] after reciting, "whereas by the 20 Geo. II. c. 38, a body corporate and politic was created by the name of 'The President and Governors for the Relief and Support of sick, maimed, and disabled Seamen, and of the Widows and Children of such as shall be killed, slain, or drowned in the Merchant Service,' and divers powers and privileges were thereby granted to the said corporation, and regulations made for the management thereof; and various provisions were by the said act made for the relief and support of maimed and disabled seamen, and the widows and children of such as shall be killed, slain, or drowned as aforesaid: And whereas the 37 Geo. III. c. 73, was passed: And whereas it is expedient to repeal some, and to extend and comprise in one act of parliament others of the provisions of the said two recited acts;" it is enacted, "That from and after the thirty-first day of December, 1834, from which day (except as hereinafter is expressly provided) this act shall commence and take effect, the whole of the said recited act of the twentieth year of the reign of his said late majesty king George the Second, except so far as the same relates to the incorporation and perpetual succession of the said body corporate and politic, or to the powers and authorities thereby vested in the said president and governors for receiving, possessing, and applying such sums of money as should be contributed, devised, or bequeathed to it, and for purchasing and holding lands and erecting an hospital, or to the rules and method thereby provided for supplying the places of the president and assistants or committees and governors or members thereof so often as vacancies shall occur, and making and altering the by-laws, constitutions and ordinances of the said corporation; and so much of the said recited act of the thirty-seventh year of the reign of his said late majesty king George the Third as relates to the payment and appropriation to and for the uses and purposes therein mentioned of the wages of deceased seamen and other persons engaged in British merchant ships trading to the West Indies, and to the penalties and forfeitures thereby imposed, so far as the same are payable or recoverable on account of any infraction of the provisions of the said act respecting the payment and appropriation of such wages as aforesaid; be and the same are hereby declared to be repealed: Provided always, that all offences which shall have been committed, and all penalties and forfeitures which shall have been incurred, and all payments and duties to which any party shall have become liable, previous to the commencement of this act, against the provisions of the said acts, shall and may be punishable and recoverable under the said acts as if the

37 Geo. III. c. 73.

Repeal of certain acts.

Proviso as to offences committed or penalties incurred.

same had not been repealed, although such payments and duties shall not in consequence of such liability have become actually receivable by the said president and governors until after the said thirty-first day of December."

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

President and governors empowered to relieve disabled seamen and their widows and children.

Sect. 2. "The said president and governors and their successors shall and may and they are hereby authorized and empowered to provide, in such their hospital as aforesaid, for the reception of such seamen as shall be rendered incapable of present or future service by sickness, wounds, or other accidental misfortunes, and those who shall become decrepit or worn out by age, or shall provide for such seamen by allowing them certain pensions, or otherwise as to the said president and governors and their successors shall seem meet and most for the advantage of the said charity; and also to relieve the widows and children of such seamen as shall be killed, slain, or drowned in the said service; and also to relieve the widows and children of such seamen as shall die after having contributed during a term of twenty-one years to the funds of this corporation, provided such children are not of the age of fourteen years, or if of that age or upwards, not capable of getting a livelihood by reason of lameness, blindness, or other infirmities, and are proper objects of charity; and also to relieve the widows and children (such children being proper objects of charity as aforesaid) of such seamen as at the time of their death shall have been receiving or have been entitled to receive pensions, under and by virtue of this act, from the fund hereby to be created, as decrepit or worn out seamen: Provided that no widow shall be entitled to any benefit under this act who shall not have been the wife of such seaman or pensioner before he became entitled to relief under the provisions of this act: Provided nevertheless, that no seaman in the said service shall be entitled to any of the provisions or benefits of this act, on account of any hurt or damage he may have received on board any ship or vessel, unless he shall produce or cause to be produced a certificate to the said president, assistants, and committees, of the hurt or damage he hath received, from the master, mate, boatswain, and surgeon, or so many of them as were in the ship or vessel to which such seaman belonged at the time of his receiving such hurt or damage, or of the master and two of the seamen if there be no other officer, or in case the master shall die, or be killed or drowned, then of the person who shall take upon him the care of the ship or vessel, and two of the seamen on board the same, under their hands and seals, thereby signifying how and in what manner such seaman received such hurt or damage, whether in fighting, defending, working, loading, or unloading the said ship or vessel, where and when he entered, and how long he had served on board the same; and the parties so signing and sealing such certificate shall and are hereby required to make oath of the truth of the contents thereof before some one of his majesty's justices of the peace, if given in Great Britain or Ireland or other his majesty's dominions, or the chief officer of the customs of the port or place where there is no justice of the peace, or before the British consul or resident in any foreign country where such certificate is executed (who are hereby respectively authorized and required to administer the same without fee or reward); and in case of sickness, whereby such seaman shall be rendered incapable of service, a certificate signed, sealed, and authenticated in like manner, signifying that he was healthy when he entered on board such ship or vessel, and that such sickness was contracted on board the same, or on shore in doing his duty in the service of the ship, and not otherwise, and expressing the time and place he entered on board such ship or vessel, and how long he had served therein; and that no widow, child, or children of any seamen killed, slain, or drowned in the said service, shall be relieved or entitled to any allowance by virtue of this act unless she or they, or some person on her or their behalf, shall produce a certificate, signed, sealed, and authenticated in like manner, signifying how and in what manner such seaman lost his life in the service of the said ship or vessel, the time and place he entered on board, and how long he had served therein; and that no

Seamen to produce certificate of the hurt they have received.

Parties signing the certificate to make oath of the truth thereof.

Certificates to be produced by seamen disabled by sickness, and by widows and children of seamen.

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

widow, child, or children of any seaman in the said service shall be entitled to any relief by virtue of this act, unless she or they shall produce or cause to be produced a certificate under the hands and seals of the minister and churchwardens and overseers of the poor of the parish, township, or place, or any two of them, or under the hands and seals of the minister and overseers of the poor of the parish, township, or place, or any two of them, where there are no churchwardens, or if in Scotland by the minister and elders, or if in Ireland by a justice of the peace for the parish, township, or place where such widow, child, or children shall at the time reside, and if such widow, child, or children are some of the people called Quakers, then by any two reputable persons of that persuasion of the parish, township, or place where such widow, child, or children have a legal settlement, or do inhabit and reside, to be attested by two or more credible witnesses, that such widow was the lawful wife and real widow, and that such child or children was or were the lawful child or children of such deceased seaman as aforesaid, and that such child or children is and are under the age of fourteen years, or if of that age or upwards, not capable of getting a livelihood by reason of lameness, blindness, or other infirmities, and is or are proper objects of charity; and that no seaman shall be provided for by a pension or otherwise, as decrepit or worn out, unless such seaman shall have served in the merchant service for the space of five years, and shall have during that time contributed and paid the monthly duty out of his wages, in and by the act of the twentieth year of the reign of king George the Second hereinbefore recited, or in and by this act, required to be henceforward paid and deducted as the case may happen, for the uses and purposes in and by this act provided."

Decrepit seamen not entitled to the benefit of this act unless they have served five years, and contributed monthly.

Sect. 3. "If any person shall forge, counterfeit, erase, or alter, or shall procure to be forged, counterfeited, erased, or altered, or shall unfairly or unduly obtain, any certificate in order to entitle him or her to any of the pensions, allowances, or benefits of this act, and shall produce or cause such certificate to be produced for that purpose, such certificate shall, upon discovery thereof, be null and void, and such person so applying for relief or provision shall be for ever incapable of receiving any of the benefits of this act, and shall be subject and liable to the like punishment as an incorrigible rogue is subject and liable to, and shall be punished accordingly as such."

Persons forging, &c. certificates to be punished, as incorrigible rogues.

President and five assistants to make a court, who are to meet weekly.

Sect. 4. "The said president, with any five or more of the said assistants or committees for the time being, shall make a full court of assistants or committees, and shall meet from time to time upon Wednesdays weekly in or near the city of London, or at such other time or place as they shall think fit to appoint; and such court shall have power, when assembled as aforesaid, in the name of the said corporation and on their account, to apply the monies arising and to be received by virtue of this act, or otherwise belonging to and vested in the said corporation, for the relief and support of such seamen, their widows and children, as are hereinbefore described, and in case there shall be any surplus thereof, or any sum or sums of money shall be contributed and given for the purpose of this act by any well-disposed persons, to lay out the same in parliamentary securities, or to dispose of the same in the purchase of such lands, tenements, or hereditaments as are allowed to be purchased and held by the said corporation by the said recited act of the twentieth year of the reign of his said late majesty George the Second, and with and under their common seal to enter into any covenants or contracts for the purposes aforesaid, as they shall think fit for the better promoting and carrying into effect the provisions of this act; and to appoint and choose, and at their pleasure to remove, displace, and supply, any officers, servants, and other person and persons to be employed for the purposes herein mentioned and intended, or other the affairs of the said corporation (other than and except such officers and persons as by the said act of the twentieth year of the reign of his said late majesty king George the Second are directed to be chosen and appointed at a general court or

Court may apply the monies of the corporation, and appoint the officers and their salaries;

Exception;

assembly of the said corporation), and to direct and appoint such salaries, perquisites, and other rewards for their labour and service therein as they shall approve and think proper, and to do, manage, transact, and determine all such matters and things as to them or the greater part of them shall appear necessary and convenient for the effecting and carrying on the purposes hereby intended."

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

and do all other matters and things necessary.

Sect. 5. "For effecting the ends and purposes aforesaid, That every master of any merchant ship or vessel belonging or to belong to any of the subjects of his majesty, his heirs or successors, and every owner being a British subject navigating or working his own ship or vessel, whether the said ship or vessel shall be employed on the high sea, or coasts of Great Britain or Ireland, or in any port, bay, or creek of the same, shall, from and after the thirty-first day of December, 1834, pay, and there shall be allowed and paid by every such master or owner, 2*s.* per month of lawful money of Great Britain, and proportionably for a lesser time, during the time he or they shall be employed in or navigate or work such merchant ship or vessel, for the uses and purposes aforesaid: Provided always, that such masters or owners of such ships or vessels, or their widows and children under fourteen years of age, or being objects of charity as aforesaid, shall have and be entitled to have a proportionate increase of the pension or other allowance, as in and by this act is provided, according to the difference between the amount of the monthly duty hereby required to be paid by other seamen, mariners, and pilots, in case such master or owner shall have paid the said sum of 2*s.* per month for a period of five years or sixty months before any application to the said president and governors for relief under this act or the provisions thereof, or any of them; but in case any such master or owner shall be killed or drowned, or become decrepit, and maimed, or disabled, before he or they shall have paid such increased rate of 2*s.* per month for the full period of five years or sixty months as aforesaid, then such masters or owners, or their widows and children, shall have and be entitled to have and receive such smaller pension or allowance as the said president and governors, or the trustees to be appointed as hereinafter mentioned shall think fit."

All masters and owners of merchant ships or vessels, &c. to pay 2*s.* per month.

All seamen or other persons serving on board such ships or vessels to pay 1*s.* per month.

Sect. 6. "Every seaman or other person whatsoever who shall serve or be employed by any person or persons whatsoever in any merchant ship, or other private ship or vessel, belonging or to belong to any of the subjects of his majesty, his heirs or successors, whether the said ship or vessel shall be employed on the high sea or coasts of Great Britain or Ireland, or in any port, bay, or creek of the same, and every pilot employed on board any such ship or vessel, shall, from and after the thirty-first day of December, 1834, pay, and there shall be allowed and paid by every such seaman, pilot, or other person employed or that shall be employed, 1*s.* per month of lawful money of Great Britain, and proportionably for a lesser time, during the time he or they shall be employed in or belong to the said ship or vessel, for the uses and purposes aforesaid: Provided always, that this act shall not extend or be construed to extend to any person or persons who shall be employed in any boat upon any of the coasts of Great Britain or Ireland, or the islands of Guernsey, Jersey, Alderney, Sark, and Man, in taking fish, nor to any person or persons employed in boats or vessels that trade only from place to place within any river of Great Britain or Ireland."

Masters of ships to keep in their hands 1*s.* per month out of seamen's pay, and pay over same to receiver of the duties.

Sect. 7. "The master, owner, or commander of every such merchant or private ship or vessel is hereby empowered and required to deduct and detain out of the wages, shares, or other profits payable or accruing to such seaman or other person employed on board such ship or vessel (other than such persons as are hereby excepted), the said monthly duty, and shall pay the same, together with the amount of the duty due and owing from himself to such officer or officers as shall on that behalf be appointed by the said president and governors, or the trustees to be appointed at any of the outports in manner hereinafter provided, and their successors, for the collecting, recovering, and receiving the said duty of

2. *Merchant's Service.*

1*s.* per month, if such seaman or other person shall have or be entitled to any such wages, shares, or profits."

4 & 5 Will. IV. c. 52.

Receivers to be appointed for port of London and outports, who are to collect and pay over the duties according to instructions.

Sect. 8. "It shall and may be lawful for the said president and governors, and their successors, at a full court of assistants or committees, to appoint such person or persons as they shall think fit to be receiver or receivers of the said duties of 2*s.* and 1*s.* per month at the port of London, and also depute and appoint the collectors or other officers of the customs of his majesty, his heirs and successors, in the several outports of Great Britain and Ireland, with the concurrence of the commissioners of the said customs, or such other persons as they shall think fit, to collect and receive the same (except in such outports and where separate trustees shall have been appointed by virtue of this act); which said receivers, as also the collectors and officers of the customs, are hereby empowered and required to collect, receive, and pay over the said duties according to such instructions and directions as shall be from time to time sent to them in writing by the said president and governors and their successors; and for the care and pains therein of the said collectors and other officers of the customs to be appointed to collect, recover, and receive the said duty, it shall and may be lawful for the said president and governors and their successors, at such court of assistants or committees as aforesaid, to make such allowance to them out of the said duties as they shall judge reasonable, so that the same do not exceed the sum of 5*l.* per centum on the gross amount thereof."

Masters to keep muster roll, and deliver duplicates thereof to the collectors. (See the 5 & 6 Will. IV. c. 19, s. 21, *post*, 821.)

Receivers to transmit duplicates of vessels not belonging to their port.

Penalty for neglect by masters, &c.

Sect. 9. "Every master, commander, or owner of any merchant ship or other private ship or vessel navigating the same, or such other person as shall have the care thereof, shall keep a book by way of muster roll or account of the ship's company, signed by himself, in which shall be entered his own christian and surname, and the christian and surnames of all the officers, seamen, and other persons employed in such ship or vessel, and over against each name the age, place of birth, and quality of such seaman or other person, and the time and place when he entered into the service of such ship or vessel: and such master, commander, or owner, or other person having the care of such ship or vessel shall continue to keep such book by way of muster roll during the whole course of the voyage, and shall from time to time enter therein when and where any such master, officer, seaman, or other person shall be discharged from or shall leave or desert such ship or vessel, and when and where any other officers and men shall be shipped on board, describing them in like manner as the persons who first entered on board are directed to be described, and when and where any of them received any hurt or damage, or were killed, slain, or drowned, or otherwise happened to die, in case there should be any such, together with a statement of the amount of wages due to them at the time of death or desertion, and of what clothes or other effects such deceased man shall have left on board; which said account shall be in the form, and shall contain a true and correct return under their respective heads of the several particulars expressed in the schedule marked (A.) and to this act annexed; a duplicate of which account shall, if required, be signed by the said master, commander, or other person having the care of the ship or vessel as aforesaid, and shall be delivered to the collectors or receivers of the said duties so appointed as aforesaid, at whatever port in Great Britain or Ireland any such ship or vessel shall report or discharge her cargo; and every such duplicate for vessels not belonging to such port of discharge shall be forwarded by such receiver to the said president and governors, to be by them transmitted to the trustees of the port to which the vessel shall belong; and in case any such master, commander, or other person shall neglect to keep such muster roll or account, or shall neglect or refuse to deliver such duplicate as aforesaid, and in case such receiver or collectors shall neglect or refuse to transmit the duplicates which shall be delivered to them as aforesaid to the said president and governors, every such person so offending shall forfeit and pay for every such refusal or omission the sum of 5*l.* of lawful money of Great Britain."

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

Masters of vessels to deduct penalties from wages of seamen, and deliver a verified account thereof to officers of president and governors, under penalty of 20*l.*

Sect. 10. "The master for the time being of every ship coming within the provisions of this act shall have authority to deduct out of the wages of the seamen thereof the amount of all forfeitures to be incurred by any such seamen, and every such master is hereby required correctly and truly to enter the same in a book to be by him kept for that purpose, which shall be signed by the master and the person next to him in the command of the ship, both of whom shall therein certify that it contains all the forfeitures which have been incurred by the seamen of the ship during the voyage, to the truth whereof the master shall make oath when required by the officer of the said president and governors in London, or of the trustees at any of the out-ports, if any, and if not, to the respective receivers or collectors of the said president and governors at such out-ports appointed to receive the monies payable in respect of the wages of merchant seamen, which oath such officer is hereby authorized to administer; and the said book, or a true copy thereof signed and certified as aforesaid, shall, within one calendar month after the ship's return from her voyage, be delivered to the said officer by the master, together with extracts from the log book of the entries therein of the causes of the several forfeitures which are hereinbefore required to be made; and every master as aforesaid who shall refuse or neglect to deliver any such account as hereby required shall forfeit and pay the sum of 20*l.*"

Collectors may summon masters of vessels, and examine them upon oath as to the truth of the muster rolls.

Masters refusing to appear or to answer, to forfeit 10*l.*

Sect. 11. "It shall and may be lawful to and for the said collectors or receivers, for the better discovery of what shall be due from the several persons serving on board or belonging to any merchant ship or other private ship or vessel aforesaid, by warrant under his or their hand or hands to summon every such master and commander, or in his absence such owner or owners of such ship or vessel as aforesaid, to be and appear at the office of the said collectors or receivers respectively (so that the persons so summoned be not obliged to travel above ten miles for the making such appearance), which said collectors or receivers are hereby empowered and directed to examine every such master and commander, or owner or owners as to the truth of the copy of such book or muster roll, and as to the number and times of service of all the several persons belonging to or employed in such ship or vessel, who are liable to or chargeable with the said duty; and if such masters or commanders, or in their absence such owner or owners, or any of them, shall refuse or neglect when so summoned to appear before the said respective persons hereby empowered to examine them in manner as aforesaid, or if they shall appear and obstinately refuse to make a full and true discovery of the matters aforesaid, then and in every such case all and every such offender or offenders for every such refusal shall forfeit the sum of 10*l.* of lawful money of Great Britain."

Secretaries, &c. of public offices to give in a list of ships employed in their service.

Sect. 12. "And for the more easy and effectual collection of the said duties of and from the masters, commanders, and owners of merchants ships or other private ships or vessels that are or shall be hired or employed on monthly charter by the several departments of the navy, victualling, ordnance, customs, post-office, or other public offices for or in the service of his majesty, his heirs or successors; be it further enacted, That the secretaries or chief clerks of the aforesaid offices or departments respectively shall once in every year, upon the first day of January in each year, or within twenty days next following at the farthest, upon application being made to them by the said president and governors for that purpose, give and deliver to the receiver or receivers of the said duties in the port of London a true and exact list or account of the number and names of all and every the ships or vessels that in the year preceding every such account shall have been hired or employed by the commissioners or other officers of every such office respectively for or in the service of his majesty, his heirs or successors, and of all and every the ships and vessels which, at the time of delivering in such account, remain in the service of every such office or department respectively, and of all such as between every such account shall be discharged from such service, and

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

Treasurers, &c. of such offices to pay no wages or freight to any master, &c. until he produce an acquittance signed by receiver of duties.

of the names of the masters, commanders, and owners of all and every such ships and vessels respectively, and also of the numbers of seamen or other persons that shall from time to time be employed in every such ship or vessel; and that no treasurer, paymaster, or other officer of or belonging to any such public office or offices shall make out or pay any bill for the freight of any ship or vessel so hired or employed, or to be hired or employed, for or in the service of his majesty, his heirs and successors, as aforesaid, or pay any wages to any master, commander, or other persons employed or that shall be employed in any such ship or vessel, until every such master, commander, or owner respectively shall and do produce and show unto such treasurer, paymaster, or other officer respectively an acquittance or certificate signed by the said receiver or receivers, or his or their deputy or deputies for the time being, whereby it shall appear that such master, commander, or owner hath duly and fully paid and discharged the said duties payable by virtue of this act, and that he is not more than three months in arrear for the same."

Duties to be paid at the port where any ship or vessel shall unload her cargo.

Sect. 13. "All and every the masters, commanders, and owners of all merchant ships and other private ships and vessels whatsoever by this act made liable to the payment of the said duties of 2*s.* per month and 1*s.* per month, shall pay all such monies as shall from time to time be due from them and every of them respectively for or on account of the said duties to the collectors and receivers appointed in pursuance of this act or of the said act of the twentieth year of the reign of his said late majesty king George the Second, at whatever port in the said United Kingdom of Great Britain or Ireland any such ship or vessel shall report or discharge her cargo, and before any such ship or vessel shall be cleared inwards by the officers of the customs of his majesty, his heirs or successors, in any such port; and that no customer, collector, comptroller, receiver, surveyor, searcher, waiter, or other officer of the customs of his majesty, his heirs or successors, shall at any time hereafter clear inwards any merchant ship or any private ship or vessel whatsoever by this act made liable to the payment of the said duties, or grant any warrant, or give or grant out any cockets, transire, returns, or discharges unto or for any ship or vessel whatsoever, or shall permit or suffer any such ship or vessel to go out of any of the ports before mentioned, until the said master, commander, or owner or owners of every such ship or vessel respectively shall and do produce and show forth unto such officer or officers an acquittance or certificate, signed by the said receiver or receivers, collectors or collector of the said duties, whereby it shall appear that such master, commander, or owners have duly and fully paid the said duties, and are not more than three months in arrear for the same, or that they are exempt from the payment of the said duties by virtue of the exceptions herein contained; and that every master, commander, or owner of any such ship or vessel who shall refuse or neglect to pay the said duty or duties in manner and within the time hereinbefore limited and appointed for payment thereof, and also every customer, collector, comptroller, receiver, surveyor, searcher, waiter, and other officer of the customs who shall make default in any of the premises enjoined them respectively by this act, or shall in anywise act contrary to the directions hereinbefore mentioned, shall for every such refusal, neglect, default, or act, forfeit the sum of 10*l.* of lawful money of Great Britain; and that the amount of such duties as shall be received in pursuance of this act, so far as the same shall be derived from the duty imposed upon the masters, commanders, or owners, and seamen, or in respect of the wages of the masters, commanders, or owners, and seamen, in such ships or vessels as shall not belong to the particular port at which such ships or vessels shall be reported or discharge their cargoes, shall be and the same is hereby required to be remitted by the collectors or receivers of the said duty at the port aforesaid to the receiver of the port of London, and that the same shall, when so received by him, be transmitted by him to the trustees (if any) of the several ports to which every such ship or vessel shall respectively

Penalty.

belong: Provided always, that it shall and may be lawful for the master, commander, or owner of any merchant ship or private ship or vessel which shall belong to any of the out-ports at which trustees shall have been appointed for the purposes hereinafter mentioned under the provisions of this act or by virtue of the said act of his late majesty king George the Second, to enter into an agreement in writing with the trustees and receiver or collector for such out-port, with the intent that the whole of the duties payable under this act on account of the said ship or vessel, and so often as the same shall be employed, may be paid to the said receiver or collector of the said out-ports by half-yearly payments; that is to say, within twenty-one days after the thirtieth day of June and thirty-first day of December respectively in every year; and that it shall and may be lawful for the masters or owners of any ship or vessel employed in the coasting trade, or only going from one port to another in any part of the coasts of Great Britain or Ireland, to enter into a similar agreement with the receiver or collector and the trustees of any of the ports to which such ship or vessel may belong; and that every such master, commander, or owner, having entered into any such agreement as aforesaid on account of any ship or vessel, shall not be required to make any payment on account of the said duties at any port at which the said ship or vessel shall report or discharge its cargo other than that to which it belongs, nor shall such master or owner be exposed to any of the penalties, nor the said ship or vessel be in any way delayed or impeded by the said officers of his majesty's customs, or any other person, in consequence of such nonpayment at any other port than as aforesaid, provided such master or owner produces before the collector or receiver for the port at which such ship or vessel shall report or discharge her cargo a certificate of the agreement hereinbefore mentioned, to be signed by the collector or receiver for the port to which such ship or vessel belongs; and such half-yearly payments of the said duties shall be enforced in the same manner and under the same penalties as are hereinbefore provided for the general collection of the duties to be levied under the provisions of this act: Provided always, that a yearly statement of the sums so received and distributed at each such port be made and published in one of the county or other newspapers circulating in the district."

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

Master or owner may enter into agreement with trustees and collectors for half-yearly payments.

Certificate of such agreement.

Payment under such agreement to be enforced.

Sect. 14. "And to prevent unnecessary delays in clearing ships and vessels, be it further enacted, That in case the master, commander, or owner of any ship or vessel liable to the payment of the duties aforesaid, shall not produce such acquittance or certificate of payment, or of an agreement for such half-yearly payment to be made at the port to which such ship or vessel belongs, as is hereinbefore mentioned, to the tide-surveyor when he shall come on board in order to clear such ship or vessel, the tide-waiters on board such ship or vessel shall be continued until such acquittance or certificate is produced, at the expense of such master, commander, or owner, and not at the expense of the crown."

If masters fail to produce proper certificates, tide-waiters to be continued on board at their expense.

Sect. 15. "The penalties and forfeitures by this act provided to be paid by any master or owner of any such merchant ship or vessel shall be recoverable before any magistrate or justice of the peace of the port or place at which any such ship or vessel shall be reported or shall discharge her cargo as aforesaid; and that notice of any application for recovering any such penalty or penalties before such magistrate or justice of the peace which shall have been served on the owner, master, or commander, broker or agent of any such ship or vessel, shall be deemed sufficient notice."

Penalties by this act recoverable before a magistrate.

Service of notice of application.

Sect. 16. "'And whereas the masters, commanders, and other officers and seamen employed in ships or vessels belonging to persons residing at some of the out-ports of Great Britain or Ireland, may be desirous of having the said several duties of 2*s.* per mensem and 1*s.* per mensem to be allowed and paid by them out of their wages as aforesaid, placed under the direction and management of persons residing in or near to such out-ports respectively;' be it therefore enacted, That from and after the first day of October one thousand eight hundred and thirty-

Owners and masters of ships of any of the out-ports are empowered to meet and appoint trustees for the said duties allowed and paid out of wages, to continue till 26th

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

December in each year.

four, and without being compelled to wait until this act for the other general purposes herein mentioned is to commence and take effect as is aforesaid, it shall and may be lawful to and for the owners of and the masters and commanders employed on board the ships and vessels belonging to persons residing at any of the said out-ports to assemble and meet at any proper time and place within the limits of the said out-ports that shall be by any five or more of them appointed by giving ten days previous notice, to be fixed at the custom house, wharf, quay, or any other public place at such respective out-port; and such owners, masters, and commanders, or the greater part of them, being so assembled as aforesaid, are hereby authorized and empowered from time to time to nominate and appoint, by an instrument in writing under their hands and seals, fifteen persons to be trustees for such out-port, for receiving, collecting, and applying the said duties of 2*s.* per mensem and 1*s.* per mensem, to be allowed, collected, and received, by virtue of this act, at such respective out-port, for relief and support of the seamen employed on board the ships or vessels belonging to such persons respectively, and their widows and children, as shall be entitled thereto by virtue of this act; which said trustees shall continue to act until the twenty-sixth day of December one thousand eight hundred and thirty-five, and until new trustees are nominated, appointed, and confirmed; and that within ten days after the twenty-sixth day of December in each succeeding year, the owners, masters, and commanders at such respective out-ports shall have power to meet and choose fifteen persons to be trustees for the year ensuing, by an instrument in writing under the hands and seals of the owners, masters, and commanders, or the majority of them so assembled, having given previous notice in the manner hereinbefore directed; which said respective trustees shall continue from time to time until new trustees are nominated, appointed, and confirmed as aforesaid; and the said instrument shall be sent, free of expense, to the president and assistants or committees of the said corporation, who are hereby authorized and required to confirm the same under the common seal of the said corporation, without fee or reward, within fifteen days after the receipt thereof; which said trustees when they shall be so confirmed as aforesaid (and whereof five shall be a quorum) shall be vested with and have the same powers and authorities to make bye laws, and to revoke or alter the same, and to take, receive, and apply any sum or sums of money which shall be contributed, devised, or bequeathed by any well-disposed persons for the purposes aforesaid, and to appoint receivers and other officers, and to collect, recover, receive, pay, and apply the said duties of 2*s.* per month and 1*s.* per month so to be allowed and paid by the seamen or other persons serving on board any ship or vessel belonging to such persons respectively at such out-ports as aforesaid, according to such rules, orders, and regulations as are or shall be established by virtue and in pursuance of this act, or have been established and continued under the provisions of the said act of the twentieth year of the reign of his said majesty George the Second, so far as the same are not inconsistent with or repealed or varied by the provisions of this act; and the said receivers and other officers shall have the same powers and authorities as the other receivers and officers to be appointed in pursuance of this act, and shall be subject and liable to the same penalties and forfeitures, any thing herein contained to the contrary thereof in anywise notwithstanding: Provided always, that if the said instrument of trust in this act mentioned shall not be sent to the president and assistant or committees within sixty days after every such nomination and appointment of trustees, when any such shall have taken place, the trust thereby created shall be considered void, and the trustees appointed under it as discharged from the said trust; and that the said president and governors and their successors duly appointed shall have power to appoint a receiver or receivers for the port or place from which such instrument of trust shall not have been sent as aforesaid, for the purpose of collecting the duties and allow-

New trustees to be chosen yearly, and instrument of election to be confirmed by president, &c.

Five trustees to be a quorum, with power to make bye laws and appoint officers.

Penalties

Instrument of trust to be forwarded to president and governors within sixty days after every 6th December.

ances payable under and by virtue of this act at such port or place aforesaid; and that the said president and governors and their successors shall have power to demand and receive from the outgoing trustee or trustees of such port or place aforesaid an account in writing of the former management of such void trust, and also to demand the payment from such trustee or trustees of any balance which may at the time of such default be in the hands of such trustee or trustees, who are hereby required to pay and deliver over the same to such receiver so to be appointed as aforesaid, together with the books of account and other books belonging to such trustee or trustees relative to such trust."

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

Sect. 17. "Where, on the default or neglect aforesaid, any such receiver or receivers shall be appointed, such appointment shall not be revocable within five years after the same shall have been so made, except by the said president and governors as they shall see fit."

Appointments on default not revocable within five years.

Sect. 18. "'And whereas trustees have been nominated and appointed at many of the out-ports of England for similar purposes to those hereby provided under and by virtue of the said act of his majesty king George the Second;' be it further enacted, and it is hereby declared, That all such trustees are to be deemed within and subject to the provisions of this act in the same manner as if they had been nominated, appointed, and confirmed under and by virtue thereof; and all such trustees are hereby empowered to continue to act in their respective trusts until the twenty-sixth day of December one thousand eight hundred and thirty-five, or until new trustees shall have been appointed, nominated, and confirmed by virtue of this act."

Trustees heretofore appointed at several out-ports to be subject to provisions of this act.

Sect. 19. By this section the corporation of merchants adventurers of Bristol are appointed trustees for duties, &c. received there; and are empowered to hold lands for purpose of this act; and receivers and officers appointed by them shall have the same powers and authorities as the other receivers and officers appointed or continued by virtue of this act, and shall be subject and liable to the same penalties and forfeitures.

Sect. 20. The guild of Trinity-house of Kingston-upon-Hull are appointed trustees for the duties, &c. received there; and receivers and other officers appointed by them shall have the same powers and authorities as the other receivers and officers to be appointed or continued under this act, and shall be subject to the like penalties and forfeitures, any thing herein contained to the contrary thereof notwithstanding.

Sect. 21. The ports of Glasgow, Greenock, and Port Glasgow, &c. are to be deemed one united port, and masters of ships belonging thereto are to elect trustees for collecting duties, &c.

Sect. 22. Trustees of out-ports are to transmit account of the yearly receipts and expenditure to president and governors.

Sect. 23. Collectors appointed by trustees or corporations aforesaid are not to send duplicate of muster rolls to the president and assistants.

Sect. 24. "No seaman or other person employed on board any merchant ship, steam packets, or other private ship or vessel shall be entitled to receive any provision or benefit by virtue of this act, at the port of London or elsewhere, unless he be subject or liable to the said duty hereby imposed, and shall pay the same when and where the same shall be required of him by virtue of this act."

No seaman to have benefit of act unless he pays the duty.

Sect. 25. "Those seamen who shall have been longest in the said service, and contributed most towards the said duties, shall be first provided for as worn out or decrepit."

Those who have served longest to be first provided for.

Sect. 26. "'And whereas it may happen that seamen or other persons employed on board ships or vessels may by accident in loading or unloading the same, or otherwise by doing such duty on shore as well as on board such ships or vessels, receive such hurt or damage that it may endanger their lives to send them to the port to which the ships or vessels respectively belong;' be it therefore further enacted, That in case any seaman or other person employed on board any merchant ship or private ship or vessel shall, in doing his duty on shore, or on board any such ship

Maimed seamen to be provided for at the port where the accident happens.

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

or vessel while in a port other than that to which the said ship or vessel shall belong, break an arm or leg, or be otherwise hurt or maimed, so that it is necessary that immediate care should be taken of him, it shall and may be lawful for the said president and governors at the port of London, and the respective trustees for the out-ports, as the case may be, and they are hereby required, to provide proper relief for every such seaman or other person that shall be so hurt or maimed at their respective ports, until he shall be so well recovered from such hurt or damage as to be removed and sent with safety to the port to which the ship or vessel in which such seaman was at the time of the accident employed shall belong; and the expense of relieving and maintaining such seaman until he be so removed as aforesaid, and also the expense of removing him, not exceeding twopence per mile, shall be re-paid to the said president and governors at the port of London, or to the trustees, if any, for the respective out-port at which the accident shall have happened, by the trustees of the port to which such ship or vessel shall belong."

Disabled seamen having served and paid five years to be provided for where they have contributed most.

Sect. 27. "In case any seaman or other person shall serve five years or more on board merchant or other ships or vessels belonging to different ports, and shall have paid the monthly duties for that entire period, and shall have become decrepit and worn out, and adjudged either by the said president and assistants or committees, or by the trustees at any of the out-ports, a proper object of relief, such person shall be provided for and relieved at the port where he shall have contributed and paid the greatest part of the said duties for the last five years of his service, any thing herein contained to the contrary notwithstanding."

Seamen who have been shipwrecked, or made prisoners by the enemy, may be relieved.

Sect. 28. "'And whereas it may happen that seamen or other persons employed in the merchant service within the limits of this act may be shipwrecked, or taken by the enemies of his majesty, and on their return from shipwreck or imprisonment may be returning with passes to the places of their respective abodes;' be it further enacted, That it shall and may be lawful for the said president and governors or the respective trustees, if they think fit, to relieve any such seaman or other person in such manner as they shall think proper."

Where regular certificates cannot be obtained, others may be admitted.

Sect. 29. "'And whereas there may be some circumstances wherein some of the respective certificates hereinbefore mentioned cannot be obtained;' be it therefore enacted, That in all cases where the certificates directed to be produced by this act for the purpose of entitling the parties producing the same to relief and support cannot be obtained, such other certificates as shall be satisfactory to the said president and governors or trustees respectively shall be received and allowed so as to entitle the party producing the same to the pensions or other relief provided by this act."

Wages of deceased seamen to be paid to trustees of port on ship's arrival, to use of executor, &c.

Sect. 30. "All and every sum and sums of money which shall be due for wages to any seaman, mariner, or other person hired or engaged on board any British merchant ship in any port or ports in Great Britain or Ireland, who shall have died on board during the voyage, shall, within three months after the arrival of such merchant ship in any port or ports of Great Britain and Ireland, be paid to the trustees of the said port to be appointed in pursuance of this act, or to the receiver or collector or other authorized agent of the said president and governors, where there are no such trustees, to and for the use of the executor or executors, administrator or administrators of the seaman, mariner, or other person so dying; and in case no claim shall be made on the said trustees by the executors or administrators of such seaman, on account of such wages, within one year after the same shall have been paid over as aforesaid, that then the said trustees of the said port shall remit the same to the collector or receiver of the said president and governors, or other their authorized agent at the port of London, in such manner and at such times as the said president and governors shall direct, to and for the use of the executor or executors, administrator or administrators of the seaman, mariner, or other person so dying; and in case no claim shall be made on the said

president and governors by the executors or administrators of such deceased seaman, on account of such wages, within one year after the same shall have been first paid over to any collector, receiver, or agent of the said president and governors, then it shall be lawful for the said president and governors to direct such wages to be paid over (but without interest for the same) to the widow, or if there be no widow claiming then to the lawful issue respectively, or such persons as by virtue of the statutes of distribution of intestates effects shall be entitled to the same; and if any master or commander of any such merchant ship shall neglect or refuse to pay over or tender to the said trustees, or the receiver or collector at the port aforesaid, all and every such sum and sums of money within the time hereinbefore limited, he shall forfeit and pay for every such offence double the amount of the sum or sums of money so due to any seaman, mariner, or other person for wages aforesaid." (*See* the 7 & 8 Vict. c. 112.)

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

Sect. 31. "All and every such sum and sums of money as shall not be lawfully demanded of the said receiver, collector, or other authorized agent of the said president and governors at the port of London by any legal representative, or widow or issue, or other person hereby authorized, as the case may be, within the term of two years after the first payment thereof to any collector or agent of the said president and governors, shall be forfeited, and shall go and be paid to the use of the said president and governors, or to the trustees of the port, if any, to which such ship belongs, by such receiver, collector, or other authorized agent of the said president and governors at the port of London aforesaid."

If not demanded in three years by representatives, then to the use of the president and governors, or trustees of respective ports.

Sect. 32. The president and governors are to pay 5 per cent. out of the duties received by them from seamen in the port of London to the Seamen's Hospital Society in that port.

Sect. 33. Five per cent. is to be deducted from gross amount in lieu of expences, &c.

Sect. 34. "All penalties and forfeitures given by this act shall be paid and applied in manner following; (that is to say,) one third part thereof to and for the person or persons who shall inform and sue for the same, and the other two third parts thereof to the said president and governors, on account of the trustees of the port to which such ship or vessel in respect of which the forfeiture shall arise belongs; and such penalty or forfeiture shall be recovered by bill, plaint, or information in any of his majesty's courts of record at Westminster, or such of them as do not exceed the sum of 20*l.*, upon information, on the oath of one or more witnesses, before any one or more of his majesty's justice or justices of the peace in any part of the kingdom of Great Britain or Ireland, who shall not reside more than ten miles from the place of abode of the person or persons complained of; which justice or justices is and are hereby authorized and required to issue out his or their warrant or warrants to bring before him or them every person charged with any offence under this act, and, in case he or they shall refuse or neglect to pay such penalties or forfeitures as aforesaid, to issue his or their warrant or warrants to levy the same by distress and sale of the offender's goods, and, in case no distress can be found, to commit the offender or offenders to the common gaol of the city, town, or place within the jurisdiction of such respective justice or justices, there to remain for the space of three calendar months, or until he or they shall pay the same."

Application of penalties.

Recovery of.

Distress.

Commitment.

Sect. 35. "If any action shall be brought or suit be commenced against any person or persons for any thing done in pursuance of this act, or in relation to the premises or any of them, every such action or suit shall be laid or brought within two calendar months next after the grievance committed in the county or place where the fact was done, and not elsewhere; and the defendant or defendants in such action may plead the general issue, and give this act, and a tender of amends before action brought, or the special matter, in evidence at any trial to be had thereupon, and that the act or matter was done in pursuance and by the authority of

Limitation of actions.

Venue.

Plea.

2. *Merchant's Service.*

4 & 5 Will. IV. c. 52.

this act; and if the same shall appear to have been so done, or if any such action or suit shall not be brought within the time before limited, and shall be brought in any other county or place than as aforesaid, or the jury shall not consider the aggrieved party entitled to more than the amends tendered, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or suffer a discontinuance of his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, and shall have such remedy for recovering the same as any defendant or defendants hath or have for costs in other cases at law." (See now, as to double costs, the 5 & 6 Vict. c. 97, s. 2, by which the defendant shall only have such an amount as will indemnify him against costs.)

Double costs.

Public act.

Sect. 36. "This act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others."

5 & 6 Will. IV. c. 19. s. 19.

Establishment of register office for seamen.

By the 5 & 6 Will. IV. c. 19. sect. 19. "'And whereas it is expedient that a register should be formed and maintained of all the mariners and seafaring men of the United Kingdom;' be it therefore enacted, That as soon as conveniently may be after the passing of this act there shall be established in the port of London an office, to be called 'The General Register Office of Merchant Seamen,' which shall consist of a registrar and such assistants and clerks with such salaries and allowances as shall be fixed and regulated from time to time by the lord high admiral or the commissioners for executing the office of lord high admiral of the United Kingdom for the time being, and that such office shall be kept at the Custom-house of the said port, and daily attendance shall be given thereat during the usual hours of business there; and the said registrar, his assistants and clerks, shall be under the control and directions of the said lord high admiral or the commissioners for executing the office aforesaid for the time being."

Sect. 20 declares, that letters to and from the registrar shall be free from postage.

7 & 8 Vict. c. 112.

By 7 & 8 Vict. c. 112, intituled "An Act to amend and consolidate the Laws relating to Merchant Seamen; and for keeping a Register of Seamen," [5th September, 1844,] reciting that "the prosperity, strength, and safety of this United Kingdom and her majesty's dominions do greatly depend on a large, constant, and ready supply of seamen; and it is therefore expedient to promote the increase of the number of seamen, and to afford them all due encouragement and protection, and for this purpose to amend and consolidate the laws relating to them; and it is also expedient to keep a register of seamen:" it is therefore enacted, "That from and after the first day of January, 1845, from which day this act shall commence and take effect, the 5 & 6 Will. IV. c. 19, shall be and the same is hereby repealed, except so far as such act repeals the acts thereby repealed, and except so far as relates to the establishment, maintenance, and regulations of the office called 'The General Register Office of Merchant Seamen:' Provided always, that all offences which shall have been committed and all penalties and forfeitures which shall have been incurred previously to the commencement of this act shall and may be punishable and recoverable respectively under the above-mentioned act as if the same had not been repealed; provided also, that all acts and things made, done, or executed under or by virtue of and in accordance with the provisions of the said act passed in the sixth year of the reign of his late majesty king William the Fourth, prior to the commencement of this act, shall be good, valid, and effectual to all intents and purposes."

5 & 6 Will. IV. c. 19, repealed from and after 1st Jan. 1845, except, &c.

No seaman to be taken to sea without a written agreement, or without a register

Sect. 2. "That it shall not be lawful for any master of any ship, of whatever tonnage or description, belonging to any subject of her majesty, proceeding to parts beyond the seas, or of any British registered ship of the burden of eighty tons or upwards employed in any of the fisheries of

the United Kingdom, or in proceeding coastwise, or otherwise, from one part of the United Kingdom to another, to carry to sea any seaman as one of his crew or complement (apprentices excepted), unless the master of such ship shall have first made and entered into an agreement in writing with such seaman, specifying what wages such seaman is to be paid, the quantity of provisions he is to receive, the capacity in which he is to act or serve, and the nature of the voyage in which the ship is to be employed, so that such seaman may have some means of judging of the period for which he is likely to be engaged; and that such agreement shall be properly dated, and shall be signed by such master in the first instance, and by the seamen respectively at the port or place where they shall be shipped; and that the signature of each of the parties thereto shall be duly attested by one witness at the least, and that the master shall cause the agreement to be read over and explained to every such seaman in the presence of such witness, before such seaman shall execute the same; and it shall not be lawful for the master of any ship to carry to sea any seaman, being a subject of her majesty, until he shall also have first obtained from every such seaman or other person his register ticket (to be procured as hereinafter mentioned), which ticket the said master is hereby required to retain (except in the cases hereinafter provided) until the service of such seaman shall have terminated, and at the termination of such service the said master shall return the register ticket to him."

Ticket being obtained from such seaman.

Agreement to be read over and explained to seamen.

Sect. 3. "That in the case of any ships, of whatever tonnage or description, belonging to any subject or subjects of her majesty, and proceeding to parts beyond the seas, (except as hereinafter provided,) the agreement shall be in the form set forth in schedule (A.) to this act annexed, and shall contain the several particulars therein mentioned or required; and the master shall, within twenty-four hours after the ship's arrival at her final port of destination in this United Kingdom, deliver or cause to be delivered to the collector or comptroller of the customs at and for such port every agreement so made as aforesaid, or a true copy thereof, and of every endorsement thereon, the agreement, or copy thereof, in either case to be certified as such by such master or owner, and also by the mate or next officer (if any) of such ship or vessel, each of whom is hereby required to sign such certificate in the presence of one attesting witness at the least; and if the original agreement be delivered to such collector or comptroller he shall retain the same until all the wages to which the agreement relates shall be paid or satisfied, and then he shall transmit such original agreement to the registrar of seamen; and no such ship shall be cleared inwards by the tide surveyor or other officer until the master shall produce and show a certificate from such collector or comptroller (which he is hereby required to give) to the effect that he has delivered his agreement, or an attested copy thereof, as aforesaid; and the tide waiters left on board shall be maintained at the expence of the master or owner until such certificate shall be produced and shown, or until it shall be proved to the satisfaction of the tide surveyor or other officer that such agreement or agreements, or such copy thereof, has or have been so delivered as aforesaid; and in the case of any ship employed in fishing on the coast of the United Kingdom, or proceeding from one part of the United Kingdom, to another or proceeding to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any place on the continent of Europe between the river Elbe inclusive and Brest, the agreement shall be in the form set forth in schedule (B.) to this act annexed, and shall contain the several particulars therein mentioned or required; and every such agreement shall not extend beyond the 30th of June and the 31st of December in each year, or on arrival in any port of the United Kingdom after the same respective dates; and the owner or master of every such ship as last aforesaid shall, within 21 days next after the 30th day of June and the 31st day of December in each year, transmit or deliver, or cause to be transmitted or delivered, to the collector or comptroller of the customs of any port of the United Kingdom, every agreement made within

Regulations respecting form of agreements, and how to be disposed of.

No ship to be cleared inwards until receipt for agreement is produced.

Agreements in form of schedule (B.) not to extend beyond 30th June and 31st December.

Owner or master to deliver such agreements or copies thereof half-yearly.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

the six months next preceding such 30th day of June and 31st day of December respectively, or a true copy thereof, and of every endorsement thereon, certified as aforesaid; and such collectors and comptrollers respectively shall and are hereby required to give a receipt (specifying the nature of the document) for every agreement or other document, or such copy thereof, to the master, owner, or person so delivering the same; and no master or owner after the expiration of the said 21 days, shall be entitled to or receive a transire, or any other customs document necessary for the conduct of the business of the ship, until he shall produce and show such receipt, or shall prove to the satisfaction of the officer that every such agreement, or such copy thereof as aforesaid, has been duly delivered as aforesaid; and the owner or master of every ship under the burden of 80 tons, employed as last aforesaid, who is not required by this act to enter into any written agreement with his crew, shall, before employing any seaman or other person in the service of his ship, receive from every such seaman or other person his register ticket, and shall retain the same until the service of such seaman or other person shall have expired, and at the expiration of such service the master shall return the register ticket to the person entitled thereto."

Vessel not to receive transire, &c. until receipt for such agreements be produced.

Masters of vessels under eighty tons in coasting or fishing trade to receive tickets from seamen.

Penalty for default.

Sect. 4. "That if any master or owner shall carry out to sea any seaman (apprentices excepted) without having first entered into the required agreement with such seaman, or if any master shall not obtain from any seaman or other person, being a subject of her majesty, his register ticket, according to the provisions of this act, he shall in either and every of such cases forfeit and pay the sum of 10*l.* for and in respect of every such seaman; and if any master or owner shall neglect to cause such agreement to be read over and explained to such seaman before the signing or execution thereof by such seaman, the said master or owner shall for each neglect forfeit and pay the sum of 5*l.* for every such seaman; and if any master or owner shall neglect or omit to deliver or cause to be delivered to such collector or comptroller any such agreement, or such copy thereof as aforesaid, or shall not deliver up any register ticket to the person entitled to it at the expiration of his service, or otherwise, as required by this act, he shall for every such neglect, omission, or offence forfeit and pay the sum of 10*l.*, or if any master or owner shall deliver or cause to be delivered a false copy of the agreement he shall for every such offence forfeit and pay the sum of 20*l.*"

Seamen not to be deprived of legal remedies.

No agreement contrary to the act, or to forego salvage, to be valid; and certified copy of agreement to be evidence.

Seamen not bound to produce agreement.

Sect. 5. "That no seaman, by reason of any agreement, shall forfeit his lien upon the ship, nor be deprived of any remedy for the recovery of his wages to which he would otherwise be entitled against any person or persons whatever; and no agreement contrary to or inconsistent with this act, nor any clause, contract, or engagement whereby any seaman shall consent or promise to forego or give up any right or claim to wages in the case of freight earned by a ship subsequently lost, or any right or claim to salvage or reward for salvage services, or such proportion of salvage or reward for salvage services as shall or may be due to him by decree or award, or otherwise, shall be valid or binding on such seaman; and every copy of an agreement so certified and delivered as aforesaid shall in all cases be received and taken as evidence of the contents of the agreement for and on behalf of the seaman; and no seaman shall in any case be required to produce such agreement, or such copy as aforesaid, or to give notice for the production thereof; but in case the agreement shall not be produced and proved he shall be at liberty to prove the contents or purport thereof, or to establish his claim by other evidence, according to the nature of the case."

Seamen refusing to join, or to proceed in the ship, or absenting themselves may be committed to gaol, or be sent on board.

Sect. 6. "That in case a seaman, whether before the commencement or during the progress of any voyage, shall at any time neglect or refuse to join the ship on board of which he shall have engaged to serve, or shall refuse to proceed to sea in such ship, or shall absent himself therefrom without leave, or shall desert, it shall be lawful for any justice of the peace in and for any of her majesty's dominions, or the territories under the go-

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

vernment of the East India Company, where or near to the place where such ship shall happen to be, or where such seaman shall be found, and such justice is hereby required, upon complaint made upon oath by the master, mate, or owner, or his agent, to issue his warrant, and cause such seaman to be apprehended, and brought before him; and in case such seaman shall not give a reason to the satisfaction of such justice for his neglect, refusal, or absence, as the case may be, or in case of desertion, it shall be lawful for any such justice, upon due proof of such neglect, refusal, absence, or desertion, to commit such seaman to prison or to the House of Correction, there to be imprisoned, with or without hard labour, at the discretion of such justice, for a period not exceeding thirty days; or it shall be lawful for the said justice, if he shall so think fit, at the request of the master, mate, or owner, or his agent, instead of committing such seaman, to cause him to be conveyed on board the said ship, or to be delivered to the master, mate, or owner, or his agent, for the purpose of being so conveyed and proceeding on the voyage, and also to award to the master or owner such costs incurred in the apprehension of the seaman as to such justice shall seem reasonable, not exceeding in any case the sum of 40*s.* which shall be chargeable against and may be deducted from the wages of such seaman; and whenever any seaman shall be committed to prison or to any House of Correction, the justice shall cause his register ticket to be delivered to the governor or keeper of such prison or House of Correction, who shall retain the same during the period of the seaman's imprisonment, and at the expiration of such period shall return the register ticket to the seaman; and whenever a seaman shall be sentenced to death or transportation the officer having the custody of such seaman shall transmit his register ticket to the registrar of seamen."

When seaman committed to prison his ticket to be delivered to gaoler.

Sect. 7. "That if any seaman during the time or period specified for his service shall wilfully and without leave absent himself from the ship, or otherwise from his duty, he shall (in all cases not of desertion, or not treated as such by the master,) forfeit out of his wages the amount of two

Forfeiture for temporary absence from or refusal to perform his duty (*a*).

(*a*) Mr. Wordsworth, in his useful little work on this statute, makes the following note and collection of cases on this provision. Formerly in ships of one hundred tons and upwards, employed in the coasting trade, if a seaman neglected or refused to proceed on the intended voyage, he forfeited to the owners *all* the wages due to him at the time—but the forfeiture for desertion afterwards, and before the completion of the voyage, and cargo delivered, or before he had received a discharge in writing from the master, was only *one month's* wages to the use of Greenwich Hospital, 31 Geo. III. c. 39, ss. 3 and 4. And in *all* cases of a seaman *wilfully* absenting himself from the ship without leave, he forfeited to the use of Greenwich Hospital *two days'* pay for each day's absence, 2 Geo. II. c. 36, s. 5, and 31 Geo. III. c. 39, s. 4. Absence occasioned by the power of a foreign country in which the ship may happen to be, without any fault on the part of the seaman, does not work any forfeiture. (*Beale* v. *Thompson*, 4 *East*, 546; *Smith*, 144; 3 *B. & P.* 405.) So also where the plaintiff was a foreigner. (*Ichason* v. *Broderick*, 4 *East*, 566; 1 *Smith*, 153.) So also the forfeiture may be *waived*, as where it is provided by a ship's articles, that any of the crew who shall absent themselves from the ship without leave, shall forfeit their wages: if, after one of the crew has so absented himself, the master receives him back again, and allows him to work like the others, the forfeiture is waived, and the wages are recoverable. (*Miller* v. *Brant*, 2 *Camp.* 590, per Lord *Ellenborough.*) If there be a clause in ship's articles, that the seamen may leave at the end of three months, if the ship is in port or in perfect safety, of which the captain is to be the sole judge, and the ship be in port in safety after three months, the seamen may leave the ship without the permission of the captain. (*Neave* v. *Pratt*, 2 *N. R.* 408.) This being the case of a private ship of war, and not of a merchant vessel, the forfeiture depended upon the particular contract of the parties, and not upon any legislative enactment. If seamen go on shore on the ship's duty, and when the boat is about to return, request to be permitted to remain on shore to get some victuals, which is refused and the boat goes without them, if they afterwards go and offer to return to their duty on board the ship, it is not desertion. (*Sigard* v. *Roberts*, 3 *Esp.* 71.) A sailor, under

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

days pay, and for every twenty-four hours of such absence the amount of six days pay, or, at the option of the master, the amount of such expenses as shall have been necessarily incurred in hiring a substitute; and in case

articles providing for a forfeiture of his wages in case of breach of any of his engagements, among which is that of serving faithfully during the voyage, can recover nothing, if he is left ashore in the course of it owing to his own fault in being absent, though he had no intention of deserting. (*Sherman* v. *Bennett*, *M. & M.* 489.) By a clause in the ship's articles of a south sea whaler, the seamen serving on board were to lose their wages, if they did not return with the ship to the port of London. After serving twenty-seven months, some of the seamen were with the consent of the captain exchanged into another ship for others belonging to that ship:—*Held*, that if these seamen had lost their wages under the articles, they could at any rate receive a reasonable compensation for their services under the count for work and labour. (*Hillyard* v. *Mount*, 3 *C. & P.* 93.) *Semble*, that a regulation in the seaman's articles, of a merchant ship, that "every seaman committed to custody for the preservation of good order, shall forfeit his wages, together with every thing belonging to him on board the ship," is in point of law a good and proper regulation. (*Rice* v. *Hayleit*, 3 *C. & P.* 534.) If seamen have incurred a forfeiture of their wages, and in a time of distress, when the ship is aground, the captain call on those seamen to assist in getting her off, this is no waiver of the forfeiture; but if the captain continues them in their work after the peril is over, it is otherwise. (*Train* v. *Bennett*, 3 *C. & P.* 3; *M. & M.* 82, *S. C.*) Where the second mate of a vessel was ordered, with three other seamen, to take the ship's boat and convey the captain on board, who had gone on shore at the Mauritius, and on their getting on shore, they refused to return with him, but remained there all night, and he was obliged to get back to his ship in another boat, and redeem his on the following morning, when such mate was taken before a magistrate at the Mauritius, and committed to prison for a month:—*Held*, that this was such an act of disobedience as to warrant the captain to detain his property on board the vessel by way of forfeiture; and consequently, that trover could not be maintained against the captain for such detention. (*Weatherpen* v. *Laidler*, 8 *Moore*, 37.) If a seaman's claim for wages is resisted on the ground that he would not do his work, which by the ship's articles is to cause forfeiture of wages, it is a good answer to this defence to show that the refusal to work was caused by the misconduct of the captain, which went to induce the men to incur such forfeitures. (*Train* v. *Bennett*, 3 *C. & P.* 3; *M. & M.* 82, *S. C.*) The legislature has also punished with the forfeiture of wages, the offence of neglecting or refusing to assist the master in defending the ship against the attack of pirates, 22 & 23 Car. II. c. 11, s. 7. (*Abb.* 472.) So also it seems, that neglect of duty, drunkenness, or any cause sufficient to justify a master in discharging a seaman during the voyage, would also deprive the seaman of his wages. (*The Exeter*, 2 *Rob. A. R.* 261.) So also if the cargo be embezzled or injured by the fraud or negligence of the seamen, so that the merchant has a right to claim a satisfaction from the master and owners, they may, by the custom of merchants, deduct the value thereof from the wages of the seamen, by whose misconduct the injury has taken place. (*Molloy*, *bk.* 2, *c.* 3, *s.* 9; 2 *Shower*, 167; 1 *Ld. Raym.* 650; *Abb.* 472.) This can be considered only as affecting the particular individual guilty of the embezzlement, and not the whole crew. And an innocent person is not, it seems, liable to contribute a portion of his wages to make good the loss occasioned by the misconduct of others. (*Thompson* v. *Collins*, 1 *N. R.* 347.) If there be a want of sufficient provisions on board the ship, it is a sufficient justification for his leaving the vessel, and will not deprive him of his right to his wages. (*The Castilie*, 1 *Hag. A. R.* 59; and see *The Eliza*, *Ib.* 186.)

The rule by which the admiralty court is guided in deciding upon questions of forfeiture of wages, is that they may be forfeited, not in cases of discharge for mere misconduct alone, but where the misconduct has been such as to render the discharge of the seaman imperatively necessary for the safety of the ship and the due preservation of discipline. (*The Blake*, 1 *Rob.* 73.) The misconduct on the part of the master and officers is not alien to the question in cases of this description. (*Ib.* 76.) The court draws a strong line of distinction between disobedience of orders in port and any insubordination whatever when the vessel is on the high

any seaman while he shall belong to the ship shall without sufficient cause neglect or refuse to perform such his duty as shall be reasonably required of him by the master or other person in command of the ship, he shall be subject to a like forfeiture in respect of every such offence, and of every twenty-four hours continuance thereof; and in case any such seaman, after the ship's arrival at her port of delivery, and before her cargo shall be discharged, shall quit the ship, without a previous discharge (*a*) or leave from the master, he shall forfeit one month's pay out of his wages: Provided always, that no such forfeiture shall be incurred unless the fact of the seaman's absence, neglect, or refusal shall be duly entered in the ship's log book, the truth of which entry it shall be incumbent on the owner or master, in all cases of dispute, to substantiate by the evidence of the mate or some other credible witness."

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Proviso.

Sect. 8. "That in all cases where the seaman shall have contracted for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeitures to be incurred by seamen under this act shall be ascertained in manner following; (that is to say,) if the whole time spent in the voyage agreed upon shall exceed one calendar month, the forfeiture of one month's pay expressed in this act shall be accounted and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages or share as a calendar month shall bear to the whole time spent in the voyage; and in like manner a forfeiture of six days pay, or less, shall be accounted and taken to be a forfeiture of a sum bearing the same proportion to the whole wages or share as the six days or other period shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed the period for which the pay is to be forfeited the forfeiture shall be accounted and taken to be a forfeiture of the whole wages or share; and the master or owner is hereby authorized to deduct the amount of all forfeitures out of the wages or share of any seaman incurring the same."

How amount of forfeiture is to be ascertained when seamen contract for the voyage.

Sect. 9. "That any seaman or other person who shall desert (*b*) the ship to which he shall belong shall forfeit to the owner thereof all his clothes and effects which he may leave on board, and he shall also forfeit all wages and emoluments to which he might otherwise be entitled; and in case of any seaman deserting abroad he shall likewise forfeit all wages and emoluments whatever which shall be or become due or be agreed to be paid to him from or by the owner or master of any other ship in the service whereof such seaman may have engaged for the voyage back to the United Kingdom; and that all wages and portions of wages and emoluments which shall in any case whatever become forfeited for desertion shall be applied, in the first instance, in or towards the reimbursement of the expences occasioned by such desertion to the owner or master of the ship from which the seaman shall have deserted, and the remainder shall be paid to the Seamen's Hospital Society; and the master shall, in case of desertion in the United Kingdom, deliver up the register ticket of such seaman or other person to the collector or comptroller of the customs at the port: Provided always, that every desertion be entered in the log book at the time, and certified by the signatures of the master and the mate, or the master and one other credible witness: and that the absence of a seaman from his ship for any time within twenty-four hours immediately

Forfeiture for desertion.

---

seas. (*Ib.* 88.) Where misconduct is set up against a suit for mariners' wages by the owners, the admiralty court has no power to mitigate the penalty; it must pronounce against the whole claim or for the whole claim. (*Ib.* 87.)

(*a*) See the repealed act, 2 Geo. II. c. 36, s. 6, and *Frontine* v. *Frost*, 3 *B. & P.* 302.

(*b*) If a seaman quit the ship with the master's leave, and when ordered to return, refuse to do so, his wages are forfeited, (*The Bulmer*, 1 *Hag.* 163); —but they are not forfeited by his quitting the ship, and refusing to proceed in her on a voyage not designated by the articles. (*The Eliza*, *Ib.* 182; *The Countess of Harcourt*, *Ib.* 248.)

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

preceding the sailing of the ship from any port, whether before the commencement or during the progress of any voyage, wilfully and knowingly, without permission, or the wilful absence of a seaman from his ship at or for any time without permission, and under circumstances showing an intention to abandon the same, and not return thereto, shall be deemed a desertion of and from the same ship; and in case any seaman shall desert in parts beyond the seas, and the master of the ship shall engage a substitute at a higher rate of wages than that stipulated in the agreement to be paid to the seaman so deserting, the owner or master of the ship shall be entitled to recover from the deserter, by summary proceeding, in the same manner as penalties are by this act made recoverable (so far as the same can be applied,) any excess of wages or portion thereof which such owner or master shall pay to such substitute beyond the amount which would have been payable to the deserter in case he had duly performed his service pursuant to his agreement: Provided always, that no seaman shall be imprisoned longer than three calendar months for non-payment of any such excess of wages."

Penalty for harbouring deserters.

Sect. 10. "That if any person shall wilfully harbour or secrete any seaman or apprentice who shall have deserted from his ship, knowing or having reason to believe such seaman or apprentice to be a deserter, every person so offending shall for every such seaman or apprentice so harboured or secreted forfeit and pay the sum of 10*l*; and no debt exceeding in amount 5*s*., incurred by any seaman after he shall have engaged to serve, shall be recoverable until the service agreed for shall have been concluded; nor shall it be lawful for any keeper of a public house, or of a lodging house for seamen, to detain any chest, tools, or other property of any seaman for any debt alleged to have been contracted by him; and in case of such detention of the chest, tools, or other property of a seaman, it shall be lawful for any justice of the peace at or near the place, upon complaint upon oath to be made by such seaman or on his behalf, to inquire into the matter upon oath in a summary way; and if it shall appear to such justice that the alleged claim is fraudulent, or that the debt was not fairly incurred to the full amount of the claim, by warrant under his hand and seal to cause such effects to be seized and delivered over to such seaman; and the person so detaining the same shall forfeit and pay a sum not exceeding 10*l*., at the discretion of such justice."

No debt exceeding 5*s*. recoverable from a seaman till voyage is ended.

Seaman's effects not to be detained under pretence of debt.

The period within which wages are to be paid.

Sect. 11. "That the master or owner of every ship shall and is hereby required to pay to every seaman his wages within the respective periods following; (that is to say,) if the ship shall be employed in coasting, the wages shall be paid within two days after the termination of the agreement, or at the time when any such seaman shall be discharged, whichever shall first happen; and if the ship shall be employed otherwise (*a*) than coasting,

(*a*) As observed by Mr. Wordsworth in his treatise on this statute, p. 23,—the payment of wages is *generally* dependent *upon the payment of freight*: if the ship has earned freight, the seamen have in like manner earned their wages; but this general principle does not apply with respect to seamen entering into the navy, whose wages in that event become at once due and payable. And as in general, if a ship destined on a voyage out and home has delivered her outward-bound cargo, but perishes in the homeward voyage, the freight for the outward voyage is due, so in the same case the seamen are entitled to receive their wages for the time employed in the outward voyage and the unloading of the cargo, unless by the terms of the contract the outward and homeward voyages are consolidated into one. (*Anon.* 1 *Ld. Raym.* 639, 789, *Abb.* 447. And see further on this subject, *Anon.* 2 *Shower*, 283; *Buck* v. *Rawlinson*, 1 *Bro. P. C.* 102; *Edwards* v. *Child*, 2 *Vern.* 727.) A seaman may under circumstances be entitled to wages, though no freight has been earned. (*Lady Durham*, 3 *Hagg.* 202.) It has of late years been usual to stipulate by express terms in the agreement, that in case the ship shall by danger of the sea, or any other accident whatsoever, be disabled, or lost during the voyage for which she is destined, so that she does not return to or arrive at the port of London, the seamen shall not receive or claim any fur-

then the wages shall be paid at the latest within three days after the cargo shall have been delivered, or within seven days after the seaman's discharge, whichever shall first happen; and in all cases the seaman shall, at the time

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

ther wages than the impress money paid to them in advance, notwithstanding the ship shall at any time before her being so disabled or lost, have broke bulk, or delivered any goods at any port or place whatsoever. And there is no instance of a claim made by the seamen against the terms of this clause in the articles. (*Abb.* 449.)

A ship's articles contained a printed clause (usual in the Baltic trade) to this effect: "And should the ship or vessel winter abroad on account of the ice, the officers and seamen agree to accept half the wages agreed upon during the time of such detention." The ship went out "seeking;" the ice prevented her from getting a cargo, but not from sailing without one; she wintered abroad:—*Held*, that, under the circumstances, the crew were only entitled to half wages during her detention. (*Hoghton, Brady*, 3 *Hagg.* 100, 101.)

A ship was hired by government to take out convicts to Van Diemen's Land. From that place it sailed to Batavia, and on several other trading voyages. It sailed on the homeward voyage to England, and arrived safe at St. Helena, but was lost before arrival at the port of discharge, and all on board perished:—*Held*, that proof of these facts, and of a seaman having gone on board the ship in England, and having been seen working on board at Van Diemen's Land, at Batavia, and afterwards at St. Helena, was sufficient to go to the jury, as evidence to entitle the seaman to wages *pro ratâ* for the voyage out. (*Harris* v. *Ive*, 1 *Har.* & *Woll.* 238.)

A seaman entered into articles to serve on board the ship R., "bound from the port of L. to the S. S., to procure a cargo of sperm oil, and to return therewith to the port of L., where the voyage was to end;" instead of wages he was to receive a certain share of the net proceeds of the cargo; and it was stipulated that no one of the crew should "demand or be entitled to his share of the net proceeds of the said cargo until the arrival of the said ship or vessel at L., and her cargo should be there sold and delivered, and the money for the same actually received by the owners. A cargo was procured, the ship was afterwards condemned in a foreign port, and the mariner accompanied part of the cargo on its homeward voyage (it having been transhipped into another vessel, the A.), but died at sea:—*Held*, that "until" in the above articles is a word of limitation of the mariner's right to wages, and not of postponement of payment of them merely; and, consequently, that, as the ship did not return to L., the administrator of the mariner was not entitled to recover his share of the net proceeds of the R.'s cargo, but only to recover on a *quantum meruit* for his services on board the A. (*Jesse* v. *Roy*, 1 *C. M.* & *R.* 316; 4 *Tyr.* 626.)

Wages—loss of vessel.—A seaman entered into articles of agreement to serve on board a ship "bound from the port of London to the South Seas to procure a cargo of sperm oil, and to return therewith to the port of London, where the voyage was to end;" and he was to receive in lieu of wages, a 95th share of the net proceeds of the cargo. By the 6th article of the agreement, it was stipulated that "no one of the said officers and crew shall demand or be entitled to his share of the net proceeds of the said cargo until the arrival of the said ship or vessel at London, and her said cargo shall be there sold and delivered, and the money for the same actually received by the owner; nor unless he shall have well and truly performed the above-mentioned voyage according to the true intent and meaning of these articles." The vessel sailed upon the voyage, and procured a cargo; but on her voyage home was disabled and condemned in a foreign port. The cargo was transhipped, and, with the exception of a small portion sold for repairs, was delivered in London, and the freight upon it paid. The seaman accompanied the cargo in the vessel to which it was transhipped, but died before it reached London:—*Held*, that the representatives of the seaman were not entitled to his share of the proceeds of the cargo under the agreement, but only to a *quantum meruit* for his services on board the second vessel. (*Luke* v. *Lyde*, 2 *Burr.* 882.)

As to what was deemed the *port of discharge*, with reference to the seamen's wages, *see Appleby* v. *Dods*, 8 *East*, 300. If the owners of a ship abandon an intended voyage after the seamen have been hired, the seamen are to be paid for the time during which they may have been employed on

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

of his discharge, be entitled to be paid, on account, a sum equal to one fourth part of the balance due to him; and in case the master or owner shall neglect or refuse to make payment in manner aforesaid, he shall for every such neglect or refusal forfeit and pay to the seaman the amount of two days pay (to be recovered as wages) for each day, not exceeding ten days, during which payment shall, without sufficient cause, be delayed beyond the respective periods aforesaid: Provided always, that nothing in this clause contained shall extend to the cases of ships employed in the southern whale fishery, or on voyages for which seamen, by the terms of their agreement, are wholly compensated by shares in the profits of the adventure."

Payment of wages or salvage to be deemed valid, notwithstanding bill of sale, &c.

Sect. 12 enacts and declares, "That every such payment of wages to a seaman shall be valid and effectual in law, notwithstanding any bill of sale or assignment which may have been made of such wages, or of any attachment or incumbrance thereon, and that no assignment or sale of wages or salvage, made prior to the accruing thereof, nor any power of attorney expressed to be irrevocable for the receipt of any such wages or salvage, shall be valid or binding upon the party making the same, and any attachment to be issued from any court whatever shall not prevent the payment of wages to any seaman; and if during the voyage the allowance of provisions which a seaman agreed to receive shall be reduced one third of the quantity or less he shall receive four-pence per day, and if the reduction be more than one third he shall receive eight-pence per day, during the period such respective deductions may be made, and such pecuniary allowance shall be paid to him in addition to and be recoverable as wages."

Allowance for short provisions.

Masters to give seamen their certificates on their discharge.

Sect. 13. "That upon the discharge of a seaman from any ship, or upon payment of the wages to him, he shall receive from the master, and the master is hereby required to give to him, not only his register ticket, but also a certificate of such seaman's service and discharge, in the form set forth in schedule (E.) to this act annexed, specifying the period of his service, and the time and place of his discharge, which certificate shall be signed by the master, and if the master shall not give such certificate to such seaman he shall forfeit and pay to him the sum of 5*l.*"

Penalty for default.

For obtaining immediate payment of wages in certain cases.

Sect. 14. "That if three days after the termination of the stipulated service, or if three days after a seaman shall have been discharged, he shall be desirous of proceeding on another voyage, and in order thereto, or for any other sufficient reason, shall require immediate payment of any amount of wages, not exceeding 20*l.*, due to him, it shall be lawful for any justice of the peace, in and for any part of her majesty's dominions or the territories under the government of the East India Company, where or near to the port or place where such service shall have terminated, or such seaman shall have been discharged, or the party or parties liable shall be or reside, on application from such seaman, and on satisfactory proof that he would be prevented from employment or incur serious loss or inconvenience by delay, to summon such party or parties before him, and if it shall appear to the satisfaction of such justice that there is no reasonable cause for delay, to order payment to be made forthwith, and in default of immediate

board the ship. (*Wells* v. *Osman*, 2 *Ld. Raym.* 1044.) In a case of *shipwreck*, where the parts of a stranded ship were sold for more than sufficient to pay the wages of the seamen, no part of the cargo having been saved, and the seamen having exerted themselves very laboriously to save the parts of the ship, and not having departed until they were dismissed by the master, the court of admiralty admitted their claim to the wages. (*The Neptune*, 1 *Hagg.* 227.)

As to the *time of payment* of seamen's wages.—This in many cases depended upon the arrival of the ship at her intended port *of discharge*. (See above, and the 8 Geo. I. c. 21, s. 7; 2 Geo. II. c. 28, s. 7; 12 Geo. II. c. 30; 37 Geo. III. c. 73; *Abb.* 453.) And by the 7th section of the 2 Geo. II. c. 36, the master was obliged to pay the seamen their wages, if demanded, in *thirty days* after the ship's entry at the Custom-house, except where there was a covenant to the contrary, or at the time the seamen were discharged, whichever first happened.

compliance with such order such party or parties shall forfeit and pay to such seaman, in addition to his wages, the sum of 5*l.*"

7 & 8 Vict. c. 112.

Summary mode of recovering wages.

Sect. 15. "That in all cases of wages, not exceeding 20*l.*, which shall be due and payable to any seaman, it shall be lawful for any justice of the peace in and for any part of her majesty's dominions or the territories under the government of the East India Company, where or near to the place where the ship shall have ended her voyage, cleared at the custom-house, or discharged her cargo, or where or near to the place where the party or either of the parties upon whom the claim is made shall be or reside, upon complaint on oath made to such justice by such seaman, or on his behalf, to summon such party or parties to appear before him to answer such complaint; and upon the appearance of such party or parties, or, in default thereof, on due proof of him or them having been so summoned, such justice is hereby empowered to examine the parties and their respective witnesses (if there be any) upon oath, touching the complaint, and the amount of wages due, and to inspect any agreement or copy thereof, if produced, and make such order for payment of the said wages, not exceeding 20*l.*, with the costs incurred by the seaman in prosecuting such claim, as shall to such justice appear reasonable and just; and in case such order shall not be obeyed within two days next after the making thereof it shall be lawful for such justice to issue his warrant to levy the amount of the wages awarded to be due, by distress and sale of the goods and chattels of the party on whom such order for payment shall be made, rendering to such party the overplus (if any shall remain of the produce of the sale), after deducting thereout all the costs, charges and expences incurred by the seaman in the making and prosecuting of the complaint, as well as the costs and charges of the distress and levy; or to cause the amount of the said wages, costs, charges and expences to be levied on the ship in respect of the service on board which the wages are claimed, or on the tackle and apparel thereof; and if such ship shall not be within the jurisdiction of such justice, or such levy cannot be made, or shall prove insufficient, then he is hereby empowered to cause the party upon whom the order shall be made to be apprehended, and committed to the common gaol of the district or county, there to remain without bail until payment shall be made of the amount of the wages so awarded, and of all costs and expences attending the recovery thereof; and the award and decision of such justice as aforesaid shall be final and conclusive" (*a*).

Masters to have same remedies for wages as a seaman.

Sect. 16. "That all the rights, liens, privileges, and remedies (save such remedies as are against a master himself) which by this act, or by any law, statute, custom, or usage, belong to any seaman or mariner, not being a master mariner, in respect to the recovery of his wages, shall, in the case of the bankruptcy or insolvency of the owner of the ship, also belong and be extended to masters of ships or master mariners, in respect to the recovery of wages due to them from the owner of any ship belonging to any of her majesty's subjects; and that no suit or proceeding for the recovery of wages shall, unless they exceed 20*l.*, be instituted against the ship, or the master or owner thereof, either in any court of admiralty or vice admiralty court, or any court of record in her majesty's dominions, or the territories under the government of the East India Company, unless

As to suits for recovery of wages.

(*a*) Notwithstanding this enactment the seaman may proceed in the admiralty court, subject however to not settling his costs of suit, as is provided for by the next section. It will be seen that the statute does not admit of an appeal against the magistrate's decisions; but as the right to a *certiorari* is not expressly taken away, that right exists.

In a suit for wages, a protest by the master, alleging, that under the 5 & 6 Will. IV. c. 19, s. 15, similar in most respects to the above, the seaman had elected the jurisdiction of a magistrate, who had dismissed the claim on the ground of forfeiture by desertion, was over-ruled, the subject of the statute being to give such summary jurisdiction only in cases of mere quantum, involving no legal question. (*The Edwin*, 3 *Hagg.* 363.)

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

the owner of the ship shall be bankrupt or insolvent, or the ship shall be under arrest or sold by the authority of any admiralty or vice admiralty court, or unless any magistrate acting under the authority of this act shall refer the case to be adjudged by any such court or courts, or unless neither the owner nor master shall be or reside at or near the port or place where the service shall have terminated, or where any seaman shall have been discharged or put on shore."

When ship is sold at foreign port, the crew to be sent home at the expence of the master or owner, and ticket and certificate of discharge to be given.

Sect. 17. "That whenever any ship whatever, belonging to any subject of her majesty, shall be sold, transferred, or disposed of at any port out of her majesty's dominions, in all such cases (unless the crew in the presence of the British consul or vice consul, or in case of there not being any such consul or vice consul then in the presence of one or more British resident merchants, not interested in the said ship, shall signify their consent in writing to complete the voyage if continued), or whenever the service of any seaman shall terminate at any place out of her majesty's dominions, the master shall and he is hereby required to give to each of the crew and to each of the seamen whose service shall terminate as last aforesaid, a certificate of discharge in the said form set forth in schedule (E.), and also his register ticket, and, besides paying the wages to which they shall respectively be entitled, either to provide them with adequate employment on board some other British vessel homeward bound, or to furnish the means of sending them back to the port in her majesty's dominions at which they were originally shipped, or to such other port in the United Kingdom as shall be agreed upon between him and them respectively, or to provide them with a passage home, or to deposit with the consul or vice consul, merchant or merchants as aforesaid, such a sum of money as shall be by them deemed sufficient to defray the expences of the subsistence and passage of such seamen; and if the master shall refuse or neglect so to do, such expences, when defrayed by such consul or vice consul, or any other person on behalf of the seamen, shall be a charge upon the owner of such ship, except in cases of barratry, and may be recovered against such owner as so much money paid to his use, together with full costs, at the suit of the consul or other person defraying such expences, or as a debt due to her majesty, in case the same shall have been allowed to the consul out of the public monies, and if defrayed by the seaman shall be recoverable as wages due to him; and in all cases of wreck or loss of the ship every surviving seaman shall be entitled to his wages up to the period of the wreck or loss of the ship, whether such ship shall or shall not have previously earned freight; provided the seaman shall produce a certificate from the master or chief surviving officer of the ship, to the effect that he had exerted himself to the utmost to save the ship, cargo, and stores."

Wages to be paid in case of wreck.

A supply of medicines, lime juice, sugar, and vinegar, &c. to be kept on board, and seamen hurt in the service of the ship to be provided with advice, &c. gratis (*a*).

Sect. 18. "That every ship navigating between the United Kingdom and any place out of the same shall have and keep constantly on board a sufficient supply of medicines and medicaments suitable to accidents and diseases arising on sea voyages, in accordance with the scale which shall from time to time or at any time be issued by the lord high admiral, or by the commissioners for executing the office of lord high admiral, and published in the *London Gazette;* and every ship (except those bound to European ports or to ports in the Mediterranean sea) shall also have on board a sufficient quantity of lime or lemon juice, sugar, and vinegar, the lime or lemon juice, sugar, and vinegar to be served out to the crew whenever they shall have been consuming salt provisions for ten days; the lime or lemon juice and sugar daily, after the rate of half an ounce each per day, and the vinegar weekly, at the rate of half a pint per week

(*a*) See the 4 & 5 Will. IV. c. 52, s. 2, *ante*, 801. A seaman is entitled to the whole of his wages, even when he has been unable to render his service, if his inability has proceeded from any hurt received in the performance of his duty, or from natural sickness happening to him in the course of the voyage. (*Chandler* v. *Greeve*, 2 *H. Bl.* 606, note; *Paul* v. *Eden*, *Abbott*, 442.)

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

to each person, so long as the consumption of salt provisions be continued; and in case any default shall be made in providing and keeping such medicines, medicaments, and lime or lemon juice, sugar, and vinegar, the owner of the ship shall incur a penalty of 20*l.* for each and every default; and in case of default of serving out such lime, or lemon juice, sugar, or vinegar as aforesaid, the master shall incur a penalty of 5*l.* for each and every default; and in case the master or any seaman shall receive any hurt or injury in the service of the ship, the expence of providing the necessary surgical and medical advice, with attendance and medicines, and for his subsistence until he shall have been cured, or shall have been brought back to some port of the United Kingdom, shall, together with the costs of his conveyance to the United Kingdom, be defrayed by the said owner of the ship without any deduction whatever on that account from the wages of such master or seaman; and, if paid by any officer or other person on behalf of her majesty, the amount with full costs of suit, shall be recovered as a debt due to her majesty; and every ship having one hundred persons or upwards on board, and every ship the voyage of which shall be deemed under the provisions of the act passed in the sixth year of the reign of her present majesty, intituled 'An Act for regulating the Carriage of Passengers in Merchant Vessels,' (*see 'Ships,' post.*) to exceed twelve weeks, having fifty persons or upwards on board, shall have on board, as one of her complement, some person duly authorized by law to practise in this kingdom as a physician, surgeon, or apothecary; and in case of every default the owner shall incur a penalty not exceeding 100*l.*"

What ships to carry surgeons.

Maintenance of a general register and record office of seamen.

Sect. 19. "And whereas in and by the said act passed in the sixth year of the reign of his late majesty king William the Fourth it was provided, [*ante*, 812,] that as soon as conveniently might be after the passing of that act there should be established in the port of London an office to be called 'The General Register Office of Merchant Seamen,' which should consist of a registrar and such assistants and clerks, with such salaries and allowances as should be fixed and regulated from time to time by the lord high admiral or the commissioners for executing the office of lord high admiral of the United Kingdom for the time being; and that such office should be kept at the custom-house of the said port, and daily attendance be given thereat during the usual hours of business there; and that the said registrar, his assistants and clerks, should be under the control and directions of the said lord high admiral or the commissioners for executing the office aforesaid for the time being: And whereas such office was established under and in pursuance of the said act, and it is expedient to maintain and continue the same under the title of 'The General Register and Record Office of Seamen;' be it therefore enacted, That such office, salaries, and allowances, with every thing appertaining to the said office, shall be maintained and continued in manner and form, and subject to such regulations, directions, and control, as the said lord high admiral or the commissioners for executing the office of lord high admiral for the time being have directed or shall direct; and the said lord high admiral or the commissioners for executing the office of lord high admiral for the time being shall have power to fix and regulate such fees as he or they may deem proper to be paid by the applicants for the inspection and copies of documents in the said office."

Register tickets to be procured.

Sect. 20. "That every person, being a subject of her majesty, intending to serve on board any ship subject to the provisions of this act (except as master or physician, surgeon or apothecary), shall and he is hereby required to provide himself with a register ticket, and for that purpose to apply personally at the General Register and Record Office of Seamen in London, or at the custom-houses of the several outports of the United Kingdom; and every applicant is hereby required to answer truly, to the best of his ability, all the questions set forth in schedule (F.) to this act annexed, before he shall be entitled to receive his register ticket; and no person shall serve in any capacity on board any ship sub-

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Masters to bring indentures and apprentices to the registrar to obtain tickets.

ject to any of the provisions of this act (except the master, physician, surgeon, or apothecary) who is not possessed of such register ticket; and the masters of all apprentices who shall be bound after the commencement of this act, or whose apprenticeship shall be in force when this act takes effect, shall, before commencing a voyage, bring all indentures and assignments of apprenticeships, together with the apprentices themselves, to the registrar of seamen in London, or to the custom-house of the nearest port, in order that each of such apprentices may be furnished with a register ticket, which ticket shall be annexed and be kept annexed to the original indenture retained by the master, and shall be delivered up to the apprentice by the master at the expiration of the apprenticeship; and the registrar of seamen and the collectors and comptrollers of customs respectively are hereby required to grant such tickets to all seamen and other persons requiring the same, and duly complying with the provisions aforesaid."

Altering, &c. a register ticket, misdemeanor.

Penalty of 20*l.* if ticket be not transmitted.

Sect. 21. "That if any person shall alter or destroy a register ticket, or counterfeit, transfer, or traffic in, for gain or otherwise, or attempt to counterfeit, transfer, or traffic in, for gain or otherwise, any register ticket issued or purporting to be issued pursuant to the provisions of this act, he shall for every such offence be guilty of a misdemeanor; and any person becoming possessed of a register ticket, other than that legally issued to him, shall forthwith transmit the same to the registrar of seamen, and in case of default he shall for every such offence forfeit and pay a sum of 20*l.*"

When register ticket is lost.

False answer a misdemeanor.

Sect. 22. "That if any seaman shall lose his register ticket he shall forthwith appear in person, and represent his case to the registrar of seamen in London, or the collector or comptroller of customs at any of the outports; and he shall truly answer all reasonable questions put to him by the said registrar or officer of customs; and if it appear that no fraud has been committed, and the loss was unavoidable, he shall be furnished with another register ticket; but if it appear that the seaman did not take due and reasonable care of his former ticket, or if he shall not give a satisfactory account of the same, he shall be liable to a penalty of not exceeding 10*s.* and not less than 2*s.* and shall not be entitled to any other ticket until such penalty shall be paid; and every person who shall apply for any ticket, and shall give a false answer to any reasonable question which may be put to him by the registrar of seamen, or his assistant, or by the collector or comptroller of customs, with reference to the granting such ticket, shall be guilty of a misdemeanor."

Register tickets of parties dead.

Sect. 23. "That all district registrars of births, deaths, and marriages shall and they are hereby required to demand from the person registering the death of any seaman the register ticket of such seaman, and, if delivered to any such registrar, he shall forthwith forward the same to the registrar of seamen; and no person, other than the said registrar of seamen, shall retain the ticket of a deceased seaman; and if any person shall retain any such ticket for more than twenty days after the death of any such seaman, or ten days after the arrival of the ship in the United Kingdom should the seaman die abroad, he shall be liable to a penalty of not exceeding 5*l.* in respect of every such register ticket so detained."

List of cancelled tickets to be prepared by registrar, and published half-yearly, and copies given thereof on application.

Penalty for using cancelled tickets &c.

Sect. 24. "That a list shall be prepared from time to time by the registrar of seamen, setting forth the numbers of all the register tickets that have been cancelled by reason of the death of seamen or otherwise within the preceding six calendar months; and such lists shall be published half-yearly in the *London Gazette*, and shall also be transmitted by the said registrar from time to time to the collectors and comptrollers of customs, to be by them conspicuously exhibited in the custom-houses and other stations of their respective ports, and copies of such lists shall be delivered to any master or owner on application; and every master or owner entering into an agreement with any seaman producing such can-

2. *Merchant's Service.*

7 & 8 Vict. c. 112

celled ticket shall be liable to and incur a penalty of not exceeding 5*l.*; and every seaman tendering or delivering to a master a cancelled ticket, or any other ticket not legally issued to him, or falsely representing himself to be a foreigner, shall forfeit to the owner all wages which shall become due to him during the service, for which he shall agree or shall have agreed."

Papers and documents to be recorded.

Sect. 25. "That duplicates of all register tickets, and all papers and documents delivered or transmitted to and retained by the said registrar, shall be by him recorded, preserved, and kept; and every copy of such duplicate tickets, papers, and documents, or any of them, certified by the said registrar or his assistant to be a true copy, shall be admitted in evidence as fully as the original thereof; and every copy of a document and endorsement thereon, which may be delivered by any owner or master under the provisions of this act, shall and may be admitted in evidence against such owner and master, and each of them, as fully as the original of such document and endorsement."

Certified copies to be evidence.

Masters of ships trading abroad to deliver lists of their crews on their departure and return.

Sect. 26. "That the master of every ship belonging to any subject of her majesty, and bound to parts beyond the seas, except in the cases hereinafter mentioned, shall, before he leaves his first port of departure from the United Kingdom, transmit or deliver, or cause to be transmitted or delivered, to the collector and comptroller of customs at such port, a list, signed by himself, of the names of his crew (including apprentices), with the numbers of their register tickets, and the capacity in which they are serving on board, in the form set forth in schedule (G.) to this act annexed; and if any subsequent change in his crew take place before finally leaving the United Kingdom the owner or master shall, upon such change taking place, apprize the collector and comptroller of the customs at the port where it occurs, by transmitting an amended list in the same form; and the master or owner of every such ship shall within forty-eight hours after the arival of such ship at her final port of destination in the United Kingdom, transmit or deliver, or cause to be transmitted or delivered, to the collector or comptroller of the customs at such port, an account or list, signed by himself, of all the seamen and others (including apprentices) who shall have belonged to the ship at any time during her absence from the United Kingdom; which account or list shall contain a full, true, and correct return under their respective heads of the several particulars expressed in the form set forth in the schedule annexed to this act, and marked (C.) with christian names and surnames of the master and all the crew at full length, and with the dates of the registry of the indentures of the apprentices, and the assignments respectively, and the port at which and the time when they were respectively registered, and also the numbers of the register tickets of every apprentice and seaman; and no vessel shall be cleared inwards by the tide surveyor or other officer until the master or owner shall produce a certificate from the collector or comptroller (which he is hereby required to give) to the effect that he has rendered such accounts or lists as aforesaid; and the tide waiters or other officers left on board shall be maintained at the expence of the master or owner until such accounts or lists shall be duly delivered as aforesaid."

Vessels not to be cleared inwards until list be rendered.

Masters of ships in the home and fishing trade to return lists half-yearly.

Sect. 27. "That within twenty-one days after the 30th day of June and the 31st day of December in each year the master or owner of every ship belonging to a subject of her majesty, of whatever tonnage, employed in fishing on the coasts of the United Kingdom or elsewhere, other than in the South Sea, Greenland, and Newfoundland fisheries, or in proceeding from one part of the United Kingdom to another, and every ship proceeding or making voyages to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any port on the continent of Europe, between the river Elbe inclusive and Brest, shall deliver or transmit, or cause to be delivered or transmitted, to the collector or comptroller of the customs of any port of the United Kingdom, an account, signed by such master or owner, of any voyage or voyages in which such ship shall have been engaged during the preceding half

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

year, ending on the respective days above mentioned, and setting forth legibly and at full length the christian and surnames of the several persons (including the master and apprentices) who shall have belonged to the ship at any time during such periods respectively; which account shall be in the form and shall contain a true and correct return under their respective heads of the several particulars expressed in the schedule marked (D.) to this act annexed, with the dates of the registry of the indentures of apprenticeship and assignments respectively, and the ports at which and the time when they were respectively registered, and the numbers of the register tickets of every seaman and apprentice; and no master or owner shall be entitled to or receive a transire or other customs document necessary to enable him to conduct the business of his ship, after the expiration of the said twenty-one days, until he shall produce and show a certificate from such collector or comptroller (which he is hereby required to give), to the effect that he has delivered such an account; and in the case of ships of all descriptions which may be unemployed for six months, or which may be employed and not require a transire or other customs document, the master or owner shall notify the same to such collector or comptroller within such twenty-one days, and in case of every default the master or owner shall be liable to a penalty of 10*l.*; and all collectors and comptrollers of customs of the ports to which the vessels belong shall transmit a list of all such ships, and of all ships of every description registered or licensed, or whose registers or licences have been transferred or cancelled in their respective ports within each half year ending as aforesaid, to the said registrar at the said office, on or before the 1st day of February and the 1st day of August in each year respectively."

Vessels not to receive transire until lists be delivered.

Owners of vessels unemployed, or not requiring customs document, to notify same.

Penalty for default.

Return to be made in case of ship lost or sold abroad.

Sect. 28. "That in case any ship belonging to any subject of her majesty shall be lost, sold, or transferred, an account, containing a similar return as required in the several and respective cases before mentioned, made out up to the period of such loss, sale, or transfer, shall, if practicable, be delivered or transmitted by the master or owner at the time of the loss, sale, or transfer, to the collector or comptroller of the port to which the ship belongs, with all convenient speed, and in case such loss, sale, or transfer shall take place out of the United Kingdom, within twelve calendar months at furthest after the loss, sale, or transfer of the ship."

Lists, &c. to be transmitted to the registrar.

Penalty on the owner or master for neglect.

Sect. 29. "That all indentures, counterparts, assignments, lists, accounts, returns, papers, register tickets, and documents by this act required to be delivered to the collectors or comptrollers as aforesaid shall be by them transmitted to the said registrar for the purposes of this act at the end of every week, unless otherwise specified in this act; and every owner or master who shall refuse or neglect to transmit, deliver or cause to be delivered, any list, account, register ticket, or other document, as required by this act, shall for every such refusal or neglect forfeit and pay the sum of 10*l.*"

Lists, &c. in the case of pleasure yachts to be transmitted to the registrar.

Sect. 30. "That all agreements, or copies thereof, lists, returns, register tickets, and other documents, which under the provisions of this act are required to be transmitted or delivered to the collectors or comptrollers of customs of the several ports in the United Kingdom, shall, in the case of pleasure yachts, be transmitted or delivered by the masters or owners of such yachts direct to the registrar of seamen, and the owners or masters thereof shall be liable to the same penalties for default as herein provided in the cases of the masters or owners of other ships failing to transmit or deliver such documents to such collectors and comptrollers."

As to the disposal of the effects of any seaman dying abroad.

Sect. 31. "That whenever any seaman, being abroad, shall die elsewhere than on board a ship belonging to any subject of her majesty, leaving any money or effects not on board his ship, it shall be lawful for her majesty's consul or vice consul at or nearest to the place, and he is hereby required, to claim and take charge of all such money and effects,

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

and to dispose of the said effects, if he shall so think fit, and after deducting all necessary and proper charges and expences incurred in the collecting thereof, or by or on account of such seaman, to remit the balance, with a full account of such money or effects, to the president and governors of the corporation 'for the relief and support of sick, maimed, and disabled seamen, and of the widows and children of such as shall be killed, slain, or drowned in the merchant service,' to be by such president and governors paid over and disposed of, in the same manner and under the same regulations as are provided by the 4 & 5 Will. IV. c. 52, *ante*, 800, with respect to the wages of seamen dying on board merchant ships; and in case any seaman dying abroad shall leave on board his ship any money, clothes, or other effects, or be entitled to any wages, the master of the said ship shall and he is hereby required to deposit the same, or the proceeds arising therefrom, with, and to pay such wages to, the president and governors aforesaid, to be by them disposed of in the same manner as is provided by the said act with respect to the wages of seamen dying on board ship, and to transmit to the said president and governors at the same time a full account of such effects and wages; and on failure the master shall forfeit a sum not exceeding 50*l.* in addition to being accountable for such money, clothes, effects, and wages; and in all cases of a seaman dying abroad the master shall, on his ship's return to the United Kingdom, deliver up to the said president and governors the register ticket of such deceased seaman, and the said president and governors, on the receipt thereof, shall transmit the same to the registrar of seamen."

Parish boys may be put out apprentices to the sea service (*a*).

Sect. 32. "That it shall be lawful for the overseers of the poor, or other persons having the authority of overseers of the poor, in and for any district, union, parish, township, or place in the United Kingdom, and they are hereby empowered, to bind by indenture, according to the form set forth in schedule (H.) to this act annexed, and put out as an apprentice in the sea service to any of her majesty's subjects, being the owner of any ship registered or licensed in any port of the United Kingdom, any boy having attained the age of twelve years, and of sufficient health and strength, who or whose parent or parents is or are chargeable to or maintained by any such district, union, parish, township, or place, or who shall beg for alms therein, with his consent, but not otherwise; and until such boy shall attain the age of twenty-one years, or shall have served as apprentice seven years, or whichever shall first happen, such binding shall be effectual to all intents and purposes: Provided always, that where any such parish, township, or place separately maintaining its own poor shall be included in any union, or shall be under the management of a board of guardians, no such binding shall be valid unless the guardians of such union, parish, or other place respectively shall previously have given their consent thereto, by causing their official seal to be affixed to the indenture, and the same to be signed by the presiding chairman of the board at any meeting, and the clerk or person acting as such at such meeting; and provided also, that every such binding shall be made in the presence of any such boy, and of two justices of the peace, who shall execute the indenture in testimony of their being satisfied that such boy hath consented so to be bound, and attained the age, and is of sufficient health and strength as required by this act; and the age of every such boy shall be truly inserted in his indenture, and the age of every such boy so inserted therein shall (in relation to the continuance of his service) be taken to be his true age, without any further proof thereof; and any certificate of baptism of such boy which may be required shall

(*a*) As to the law of apprentices in general and parish apprentices, a considerable portion of which will be here applicable, *see title "Apprentices,"* Vol. I. By the common law, an apprentice cannot be compelled to go beyond sea; *see* Vol. I. pp. 194, 203. As to the settlement of sea service apprentices, *see* 4 & 5 Will. IV. c. 76, s. 67, *ante, title "Poor,"* Vol. IV.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

No apprenticeship binding after apprentice shall have attained twenty-one.

Apprenticeships to continue until the return of the ship, and apprentice to be paid wages.

be given and attested by the officiating minister without fee or reward: Provided always, that no apprenticeship to the sea service, whether parish or otherwise, shall be binding after the apprentice shall have attained the age of twenty-one years; and that every indenture, together with his register ticket annexed thereto, shall be given up to such apprentice on his attaining such age, or at the expiration of his apprenticeship, whichever shall first happen, by the person to whom he shall be bound at the time, under a penalty of 20*l.* to be paid by such person on default; but should any apprenticeship, parish or otherwise, expire during a voyage, and before the ship's arrival at her final port of destination in the United Kingdom, such apprenticeship shall, notwithstanding, continue until the return of the ship to her final port of destination in the United Kingdom; but after one calendar month from the expiration of such apprenticeship the apprentice shall be paid the same wages as an able-bodied seaman or ordinary seaman of the said ship, according to his qualification."

Parish apprentice may be turned over to the sea service.

Sect. 33. "That it shall be lawful for any master or person to whom any parish apprentice shall have been or shall be hereafter bound to a service on shore, according to the statutes for the time being relating to such apprentices, or for the executors or administrators, or, there being none such, for the widow of any deceased master, with the concurrence of two or more justices of the peace in and for the county, district, or place where such boy shall have been bound apprentice, to assign such boy, with his consent, to be given in the presence of such justices, but not otherwise, as apprentice to any such owner as aforesaid, to be employed in the sea service during the period then remaining unexpired of his apprenticeship; and every such assignment shall be attested as next hereinafter mentioned."

Indentures may be assigned on the death of the master.

Sect. 34. "That in the event of the bankruptcy, insolvency, or death of the master of any such parish apprentice to the sea service, it shall be lawful for such master, or the executors or administrators of such master, or, there being none such, for the widow of such deceased master, to assign the indenture of any such apprentice for the residue of the term then unexpired therein to any other owner of any such ship: Provided always, that such assignment, if executed within the limits of the port of London, shall be attested by the said registrar, his assistant, or one of his clerks, and if executed at any other port, by the collector or comptroller of the customs of such port."

Parish officers to prepare indentures.

Sect. 35. "That such overseers, guardians, or other persons as aforesaid shall cause the indenture of apprenticeship to be prepared and transmitted in triplicate; (that is to say,) two counterparts, besides the indenture, to the said registrar, if the owner of the ship to whom such apprentice is to be bound shall be or reside within the limits of the port of London, and if at any other port, to the collector or comptroller of the customs at such port; and shall cause each such poor boy to be conducted and conveyed to such port or place by a constable or other trustworthy person, at the expence of the district, union, parish, township or place; and when any such boy shall be so bound he shall be provided by the guardians of the said union or parish as aforesaid, or, in case the said parish or place shall not be included in any union or governed by a board of guardians, by the overseers, with a sufficient outfit of sea clothing, bedding, and similar necessaries, to the value of 5*l.*, which said amount, together with the expences to be incurred in the binding and conveyance of the said boy, shall be charged by such guardians or overseers respectively to the account of the parish or other place by whose overseers the said boy shall be bound, and be allowed to them in their account; and the said indentures so entered into by the overseers of any parish or other place as aforesaid may be sued upon in the name of the overseers of the poor of the said parish or other place for the time being, by their name of office; and no action commenced for the breach of any covenant therein contained, with the consent of the vestry of such parish or place, shall abate by reason of death or any change of

Constable to convey the apprentice.

Guardians or overseers to provide clothing, &c.

overseers of such parish or place pending the same, but shall be proceeded in by the overseers for the time being, who shall be entitled to charge the whole amount of the costs incurred in such action, and not recovered from the defendant therein, upon the poor rates collected by them, though part of such costs shall have been incurred by their predecessors."

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Sect. 36. "That such indentures shall be executed in the presence of and attested by the constable or other person who shall conduct or convey such apprentice; and such indentures shall bear date respectively on the days on which they are executed; and such constable or other person shall transmit one of the said counterparts, duly executed, to the overseers, guardians, or other persons aforesaid, one to the master, and another to the said registrar."

How indentures to be attested.

Sect. 37. "That the master or owner of every ship belonging to any subject of her majesty, and of the burden of eighty tons and upwards (except pleasure yachts), shall have on board at the time of her proceeding from any port of the United Kingdom, and at all times when absent from the United Kingdom, or navigating the seas, one apprentice, or more, in the following proportion to the number of tons of his ship's admeasurement, according to the certificate of registry; (that is to say,) for every ship of eighty tons and under two hundred tons, one apprentice at the least; for every ship of two hundred tons and under four hundred tons, two apprentices at the least; for every ship of four hundred tons and under five hundred tons, three apprentices at the least; for every ship of five hundred tons and under seven hundred tons, four apprentices at the least; and every ship of seven hundred tons and upwards, five apprentices at the least; all of whom, at the period of their being bound respectively, shall be subjects of her majesty, and above twelve and under seventeen years of age, and be duly bound for the term of four years at the least; and if any such master or owner shall neglect to have on board his ship the number of apprentices as hereby required, together with their respective indentures, assignments, and register tickets, he shall for every such offence forfeit and pay the sum of 10*l.* in respect of each apprentice, indenture, assignment, or register ticket so wanting or deficient."

Every ship, except pleasure yachts, to have apprentices according to her tonnage.

To be subjects of her majesty.

Their age and term of apprenticeship.

Penalty for deficiency of apprentices, &c.

Sect. 38. "That in case any indentures of apprenticeship of any description shall be cancelled, or any apprentice, parish or otherwise, shall die on shore or desert, or by reason of the vessel of the master not having made a voyage for six months shall not be reported in either of the said lists, such cancellation, death, desertion, or non-employment shall forthwith be notified in writing by the master of the apprentice to the said registrar, if the ship on board which the apprentice was bound to serve shall belong to the port of London, or otherwise to the collector or comptroller of the port to which the said ship shall belong; and for every default the said master shall be liable to a penalty of 10*l.*; and the collector or comptroller, if the notification be made to him, shall transmit the same to the said registrar within one week from the receipt thereof; and no cancelling of any indenture of apprenticeship of any description shall be valid or effectual without the mutual consent of the parties, or without the consent or in the absence of the registrar of seamen in London, or of the collector or comptroller of customs of the port in which such cancellation shall take place, or, in case of bindings by the overseers, without the additional consent of the guardians of the union or parish whose consent was given to the said binding, to be testified by a copy of a minute of the board forwarded by the clerk to the said guardians."

The cancelling of indentures, and death or desertion of apprentices, to be notified.

Penalty.

Consents necessary in cancelling indentures.

Sect. 39. "That the said registrar in London, and the collector and comptroller of the customs at each other port, shall, in a book to be kept for that purpose, cause to be entered from time to time all such indentures and assignments of parish apprentices as aforesaid, specifying therein the dates thereof, the names and ages of the apprentices, the parishes or places from whence they are sent, the names and residences of their masters to

Indentures and assignments of parish apprentices to be registered.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Apprentices to appear personally when indentures or assignments registered.

whom they are bound or assigned, and the names, ports, and burden of the respective ships to which such masters belong, and shall make and subscribe on each indenture and assignment an endorsement, purporting that the same hath been duly registered pursuant to this act; and such registrar, collectors, and comptrollers respectively shall require the personal attendance of every such apprentice at the time of registering his indenture or assignment thereof; and every such collector and comptroller shall also, at the end of each week, transmit a list of the indentures and assignments and cancellations so registered by him within the week, containing all the particulars aforesaid, to the said registrar."

Indentures and assignments of other apprentices to be registered (a).

Sect. 40. "That in every case of a person (other than such parish apprentice as aforesaid) binding himself apprentice to the sea service the indentures to be executed on such occasion shall be in duplicate, in the form set forth in schedule (I.) to this act annexed, and a counterpart shall be delivered to the said registrar, if the master shall be or reside within the port of London, or if at any other port, to the collector or comptroller of such port; and the indentures shall be registered in a book to be kept for that purpose by the said registrar, collectors, and comptrollers respectively, in which book shall be expressed the dates of the several indentures, the names and ages of the apprentices, the names and residence of their masters, and (if known) the names, port, and burden of the several ships on board which they are respectively to serve; and such registrar, collectors, and comptrollers respectively shall require the personal appearance of every such apprentice at the time of registering his indenture or the assignment thereof, and shall endorse and subscribe upon each indenture a certificate purporting that the same hath been duly registered pursuant to this act; and the said collectors and comptrollers shall also at the end of each week transmit a list of the indentures and assignments registered by them within the week, containing all the particulars aforesaid, together with the said counterparts, to the said registrar, for the purposes of this act; and that it shall be lawful for the master of such apprentice, or in case of his death his executor or administrator, with the consent of the apprentice if of the age of seventeen years or upwards, and if under that age with the consent of his parent or guardian, to assign or transfer the indenture of any such apprentice to any other master or owner of any registered ship; and all such apprentices may during the term for which they shall be bound be employed in any ship of which the master for the time being of any such apprentice may be the master or owner: Provided always, that every such assignment shall be registered and endorsed by the said registrar, or by the collector or comptroller of the customs at the port where the master shall be, or to which his ship shall belong; and the said collector or comptroller shall notify the same to the said registrar, and transmit an exact copy of the said endorsement to the said registrar."

As to assignment of indentures of apprentices.

Assignments to be registered.

(a) It was held that the indentures of a mariner's apprentice, bound under 5 Eliz. c. 5, s. 12, must be enrolled in the next corporate town, according to the statute, in order to sustain an action of covenant, and not in the Trinity House, according to the charter of that company; for the king cannot by his charter alter the place of enrolment, but it must be according to the direction of the statute; otherwise the covenants should be according to the common law, and the apprentice not bound by them. (*Paulson's case*, 3 *Lev.* 389; 1 *Bott*, 634; *Barber* v. *Dennis*, 6 *Mod.* 69; 1 *Bott*, 527.) The provision, however, contained in that clause, was intended for the benefit of the apprentice, and as a check upon the master. Therefore, where the indenture was not enrolled in the town where the apprentice was then inhabiting, nor in the next corporate town to the habitation of the apprentice, pursuant to the stat. 5 Eliz. c. 5, nor with the collector of the customs, pursuant to the 2 & 3 Ann. c. 6, it was holden that the apprentice should not be prejudiced by the neglect of the master to enrol the indenture, although the stamp duties were thereby evaded. (*R.* v. *Gainsborough*, *Burr. S. C.* 586; 1 *Bott*, 635.)

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Apprentices exempted from contributions.

Sect. 41. "That no apprentice bound or assigned pursuant to this act, nor any master or owner in respect of such apprentices shall be liable to any payment or contribution to or towards any hospital or institution; and that all agreements, attested copies, indentures, assignments, counterparts, and tickets, made, signed, or executed in compliance with or under the provisions of this act, shall be wholly exempt from stamp duty."

Documents exempted from duty.

Penalty on masters neglecting to register, &c. indentures,

and for suffering apprentices to quit their service.

Sect. 42. "That if any master or owner to whom any apprentice to the sea service shall be bound or assigned shall neglect to deliver a counterpart, and cause the indenture or the assignment (as the case may be) to be registered as required by this act, so far as depends on such master or owner, within ten days after the binding or assignment, every such master or owner shall for every such neglect forfeit and pay the sum of 10*l.*; and if any such master, or the master of any ship shall, after the ship shall have proceeded on the voyage upon which such ship may be bound, permit any apprentice to quit his service or the service of the ship, except for the purpose of entering into her majesty's naval service, every such master shall for every such offence forfeit and pay the sum of 20*l.*"

Justices to determine complaints (*a*).

Sect. 43. "That any justice of the peace residing at or near to any port to which any ship as aforesaid, having on board thereof any apprentice, shall at any time arrive, shall have full power and authority to inquire into, and examine, hear, and determine all claims of apprentices upon their masters under their indentures, and all complaints of hard or ill usage exercised by their respective masters towards any such apprentices, or of misbehaviour on the part of any such apprentices, and to proceed thereupon as one or more justice or justices of the peace is or are empowered by law to do in other cases between masters and apprentices; and if the master of any ship shall not send on shore, in the charge of the mate or other trustworthy person, any apprentice desirous of complaining to a justice of the peace, so soon as the service of the ship will permit, he shall for every such default forfeit and pay the sum of 10*l.*"

Common assaults may be summarily punished by two justices (*b*).

Sect. 44. "And whereas by an act passed in the ninth year of the reign of his late majesty king George the Fourth, for consolidating and amending the statutes in England relative to offences against the person, a summary jurisdiction is provided for the punishment of persons guilty of common assaults and batteries: and whereas it is expedient that the provisions of the last-mentioned act should extend to similar offences committed on board ships belonging to subjects of her majesty: be it therefore enacted, That in the case of any assault or battery committed on board any ship belonging to any subject of her majesty, in any part of the world, it shall be lawful for any two justices of the peace in any part of her majesty's dominions, or the territories under the government of the East India Company, residing at or near any port or place at which the said ship may arrive or touch, upon complaint of the party aggrieved, to hear and determine any such complaint, and to proceed and make such adjudication thereon as by the said act any two justices are empowered to do in the cases of assaults and batteries in England; and the fine or forfeiture to be imposed in any such case shall be payable to the Seamen's Hospital Society: Provided always, that such complaint shall be made and prosecuted within three months after such alleged assault or battery, or within three months after the arrival of the ship at her final port of destination in the United Kingdom, or within three months after the respective parties shall be within the jurisdiction of such justices as aforesaid."

Masters entitled to receive the wages, &c. of apprentices entering into the navy.

Sect. 45. "That no apprentice to the sea service shall be at liberty to enter into the naval service of her majesty during the period of his apprenticeship without the consent of his master; but if, nevertheless, he shall voluntarily enter into such naval service of her majesty, and shall be allowed by his master to continue therein, such master, in case he shall

(*a*) As to the jurisdiction of justices over apprenticeships in general, *see* "*Apprentices*," Vol. I. p. 202.

(*b*) See "*Assault*," Vol. I. p. 256.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

give notice to the secretary of the admiralty of his consent to his apprentice remaining in her majesty's said service during the residue of the term of his apprenticeship, shall, upon the production of the indenture and assignment (if any), if duly registered, and having the register ticket attached, be entitled to receive to his own use any balance of wages and prize money that may become due and payable to any such apprentice until the expiration of his apprenticeship."

No seaman to be discharged abroad, nor to be abandoned, or left behind, without sanction of consul, &c.

Sect. 46. "And whereas great mischiefs have arisen from masters of merchant ships leaving seamen in foreign parts, who have been thus reduced to distress, and thereby tempted to become pirates or otherwise misconduct themselves, and it is expedient to amend and enlarge the law in this behalf; be it therefore enacted, That if any master of a ship belonging to any subject of her majesty shall discharge any person belonging to his ship or crew at any of her majesty's colonies or plantations, without the previous sanction in writing (to be endorsed on the agreement) of the governor or other officer holding the chief authority there, or of the secretary or other officer duly appointed by the government there in that behalf, or in the absence of such functionaries then of the chief officer of customs resident at or near such port or place, or shall discharge any such person at any other place abroad without the like previous sanction, to be so endorsed on the agreement by her majesty's minister, consul, or vice consul there, or in the absence of any such functionary then of two respectable merchants resident there, such master shall be guilty of a misdemeanor; or if any master of any such ship shall abandon or leave behind at any such colony or plantation any person belonging to his ship or crew, on the plea or pretence of unfitness or inability to proceed upon the voyage, or of desertion or disappearance from the ship, without a previous certificate in writing (to be endorsed on the agreement) of the governor, secretary, or other officer as aforesaid, or in the absence of such functionary then of the chief officer of customs resident at or near such port or place, certifying such unfitness, inability, desertion, or disappearance, or shall abandon or leave behind any person belonging to his ship or crew at any other place abroad, on shore or at sea, upon such plea or pretence, without the like previous certificate of her majesty's minister, consul, or vice consul there, or in the absence of any such functionary then of two respectable merchants, if there be any such at or within a reasonable distance from the place where the ship shall then be, such master shall be guilty of a misdemeanor; or if any master of any such ship, in case any person belonging to his ship or crew shall desert from the said ship at any place abroad, shall neglect to notify the same in writing to one of such functionaries as aforesaid, if there be any such resident at or near the place, and in their absence, if it be out of her majesty's dominions, then to two respectable merchants, if there be such at or near the place, within twenty-four hours of such desertion, such master shall be guilty of a misdemeanor; and the said functionaries are hereby authorized and required, and the said merchants are authorized, to examine into the grounds of such proposed discharge, or into the plea or pretence of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, upon oath (which oath they are hereby respectively authorized to administer), and to grant or refuse such sanction or certificate according to the circumstances, and as it shall appear to them to be just."

Forcing seamen on shore, &c. a misdemeanor (a).

Sect. 47. "That if the master of any ship belonging to any of her majesty's subjects, or the mate or other officer of such ship, shall wrongfully

(a) In an indictment against the master of a merchant ship, on the now repealed stat. 5 & 6 Will. IV. c. 19, for wilfully leaving a seaman behind before the termination of the voyage for which he was shipped, the allegation of ownership is a material allegation, and must be proved as laid; and the only defence which the master can set up is, the production of a certificate of the consul or other party mentioned in the statute, or proof that it was impossible to obtain such certificate. (*R.* v. *Dumelt*, 1 *Car. & Kir.* 425.)

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore or at sea, in or out of her majesty's dominions, any person belonging to his ship or crew, before the completion of the voyage for which such person was engaged, or the return of the ship to the United Kingdom, such master, mate, or other officer shall be guilty of a misdemeanor; and every misdemeanor mentioned or created by this act shall and may be prosecuted by information at the suit of her majesty's attorney general, or by indictment (*a*) or other legal proceeding in any court having criminal jurisdiction in her majesty's dominions at home or abroad; and the offence may be laid and charged in the said information, indictment, or other legal proceeding to have been committed in the county or place where the offender shall happen to be, who, being convicted thereof, shall be liable to fine or imprisonment, or both, as to the court before whom he is tried shall seem meet; and every court is hereby authorized to issue a commission or commissions for the examination of any witness or witnesses who may be absent or out of the jurisdiction of the court; and at the trial the depositions taken under such commission or commissions, if such witness or witnesses shall be then absent, shall be received in evidence" (*b*).

Where misdemeanors may be prosecuted.

Sect. 48. "That if any master shall, contrary to the provisions of this act, discharge, abandon, or leave behind any seaman or other person belonging to the ship or crew, with or without his consent, it shall be incumbent on such master, in any information, indictment, or other proceeding against him, to produce or prove such sanction or respective certificate as aforesaid, or prove the impracticability of obtaining such certificate."

If any of the crew are left behind, the proof of sanction or authority to be upon the master.

Sect. 49. "That every such master who shall leave any seaman or other person as aforesaid on shore at any such colony or plantation or place abroad, under a certificate of his not being in a condition to proceed on the voyage, shall deliver to one of the said functionaries, or if there be none such to any two respectable merchants there, or if there be but one then to such one merchant, a just and true account of the wages due to such person, and pay the same either in money or by a bill drawn upon the owner; and if by bill, then such functionaries or merchants are respectively authorized and required, by endorsement on such bill, to certify that the same is drawn for money due on account of seamen's wages, or to that effect; and any master who shall refuse or neglect to deliver a just and true account of such wages, or to pay the amount thereof in money or by bill as aforesaid, shall for every such offence or default forfeit and pay the sum of 10*l.*, and every master who shall deliver a false account of such wages shall for every such offence forfeit and pay the sum of 20*l.*"

Seamen when allowed to be left behind, to be paid their wages.

Sect. 50 provides and enacts, "That nothing in this act or in any agreement contained shall prevent any seaman or person belonging to any ship or vessel whatever from entering or being received into the naval service of her majesty, nor shall any such entry be deemed a desertion from the ship or vessel, nor shall such seaman or other person thereby incur any penalty or forfeiture whatever, either of wages, clothes, or effects, or other matter or thing; and no master or owner shall insert or introduce, or permit to be inserted or introduced, into any articles or agreement, any clause, engagement, or stipulation whereby any seaman or other person shall or may incur any forfeiture or be exposed to loss in case he shall enter into her majesty's naval service; and if inserted, the clause, engagement, or stipulation shall be void, and the offender shall thereby incur a penalty of 20*l.*"

Act not to extend to prevent seamen from entering into the navy.

Sect. 51. "That when any seaman shall quit any such ship or vessel as aforesaid, in order to enter into her majesty's naval service, and shall there-

Upon entry of seamen into the navy from any

(*a*) See note (*a*) preceding page.

(*b*) This enactment is a virtual repeal of the 9 Geo. IV. c. 31, s. 30; it is more extensive, so far that it admits of the offence being prosecuted "where such master or other person shall happen to be;" the 9 Geo. IV. only allowed it to be prosecuted in this country.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

ships they shall be entitled to the immediate delivery up of their clothes, register tickets, and payment of any wages that may be due.

upon be actually received into such service, not having previously committed any act amounting to and treated by the master as desertion he shall be entitled immediately upon such entry to have his register ticket and all his clothes and effects on board such ship or vessel delivered to him, and to receive from the master the proportionate amount of his wages up to the period of such entry, to be paid either in money or by a bill on the owner; all which register ticket, clothes, effects, money, or bill such master is hereby required to deliver and pay to him accordingly, under a penalty of 20*l.* for any refusal or neglect, to be recovered with full costs of suit by such seaman; but in case the master shall have no means of ascertaining the balance, he shall make out and deliver to such seaman a certificate of the period of his service, and the rate of wages he is entitled to, producing at the same time to the commanding or other officer of her majesty's vessel the agreement with the seaman; and every such master, upon the delivery of such register ticket, clothes, and effects, and the settlement of such wages in manner herein mentioned, shall receive from the officer in command of the vessel into which the seaman shall have entered a certificate of such entry, endorsed on the agreement, and signed by the said officer, which such officer is hereby required to give."

Power for her majesty to sue for the amount advanced for the relief of seamen left abroad.

Sect. 52. "That if any person shall be discharged, or wilfully and wrongfully left behind or abandoned, at any place beyond seas, in or out of her majesty's dominions, by any master, mate, or other officer, contrary to the provisions of this act, and shall become distressed, and be relieved under the provisions of an act passed in the eleventh year of the reign of his late majesty king George the Fourth, for amending and consolidating the laws relating to the pay of the royal navy, (see 11 Geo. IV.; and 1 Will. IV. c. 20, s. 82,) or any act hereafter to be passed for that purpose, or if any person shall, as principal or agent, engage any subject of her majesty to serve in any vessel belonging to any foreign power, or to the subject of any foreign state, and such last-mentioned person shall become distressed and be relieved as aforesaid, then, in addition to the wages due from such master or owner or person making such engagement, and the penalties to which such master may be liable, her majesty shall be entitled to sue such master or the owner of the ship, or any person who shall have made such engagement as aforesaid, at the discretion of the commissioners for executing the office of lord high admiral of the United Kingdom, for all the charges and expences which shall have been incurred in or for the subsistence, necessary clothing, and conveyance home or burial (should he die abroad or before reaching home) of any such seaman or person relieved as aforesaid, as money paid to the use of such master or owner or other person, who shall have made such engagement as aforesaid, and recover the same, together with full costs of the suit, in the same manner as other debts due to her majesty are recoverable; and in any proceeding for that purpose proof of the account furnished to the said commissioners by any such functionaries, or by such two merchants, or one merchant, according to the case, as provided by the said act of the eleventh year of king George the Fourth, shall, together with the proof of payment by the said commissioners, or by the paymaster general, of the charges incurred on account of any such person, be sufficient evidence that such person was relieved and conveyed home or buried at her majesty's expence; and the court in which any proceeding for the recovery of the said money shall be instituted is hereby authorized to issue a commission or commissions for the examination of witnesses, and the depositions taken under such commission or commissions shall be used as evidence."

Ship's agreement, indentures, and assignments of apprenticeship and register tickets, on arrival at a foreign port, to be deposited with the consul,

Sect. 53 "That if any ship belonging to a subject of her majesty (except packets for passengers in the course of their voyage) shall arrive at any foreign port where there shall be a British consul or vice consul, or at any port in a British colony, and remain thereat for forty-eight hours the master shall, within forty-eight hours of the ship's arrival, deliver or cause to be delivered to such consul or vice consul at such foreign port, or to the collector or comptroller of the customs at such port of a British colony,

7 & 8 Vict. c. 112.

the agreement or agreements before mentioned, together with an account at the foot of such agreement of all apprentices on board, setting forth their christian and surnames at full length, the dates of the registry of their indentures and assignments respectively, and the ports at which and the time when they were registered, and also all indentures and assignments of apprenticeships, and the register tickets of all the crew who shall be subjects of her majesty, the whole to be kept by such consul or vice consul, collector or comptroller, as the case may be, during the ship's stay in such port, and (excepting the register tickets of deserters, which are to be transmitted by such functionaries to the registrar of seamen,) to be returned to the master a reasonable time before his departure, with a certificate endorsed on such agreements respectively, stating when the same were respectively delivered and returned, without any fee or charge being made for the same; and in case it shall appear that the required number of apprentices are not on board, or that the required forms or existing laws have been in any respect neglected or transgressed, such consul or vice consul, collector or comptroller, shall make an endorsement to that effect on such agreement, and forthwith transmit a copy of such endorsement, with the fullest information he can collect regarding such neglect or transgression, to the said registrar; and if any master shall neglect to deliver any agreement, indenture, assignment or register ticket, or such account as aforesaid, he shall for every such neglect or default forfeit and pay the sum of 20*l.*; or if any master shall deliver any false or incorrect account, he shall for every such offence forfeit and pay the sum of 30*l.*"

and at a colony with the officers of customs.

Consuls to make endorsements on agreements

Penalty on masters for neglect, &c.

Sect. 54. "That no seaman shall be shipped at any such foreign port by any such master, except with the sanction of such consul or vice consul, to be endorsed or certified on the agreement, under a penalty of 20*l.*, to be forfeited by the master for every seaman so shipped."

No seaman to be shipped at a foreign port without the sanction of the consul.

Sect. 55. "That the master of every ship belonging to any subject of her majesty shall and he is hereby required to produce and show the log book, muster roll of the ship, and the agreement or agreements with his crew, their register tickets, and indentures of his apprentices, and the assignments thereof, and a list of all the passengers and persons on board, to the captain, commander, or other commissioned officer of any of her majesty's ships or vessels requiring the production and sight thereof; and that it shall be lawful for any such officer in her majesty's naval service to muster the crew (including apprentices) of any ship belonging to any such subject, in order to be satisfied that the provisions of this act, and every other act by which the crews of such ships as aforesaid are regulated and the laws relating to navigation, have been duly kept and complied with; and if any master shall, upon being required so to do by any such officer, neglect or refuse to produce such log book, muster roll, or agreement, register tickets, indentures, and assignments, and lists of passengers and persons, or any of them, or shall obstruct any officer in the execution of his duty in mustering the said crew, or shall produce any false log book, muster roll, or list, he shall for every such offence forfeit and pay the sum of 20*l.*"

Masters to produce agreement, &c. to the officers of queen's ships.

Sect. 56. "That for the better carrying into effect the purposes of this act, it shall be lawful for her majesty's consuls and vice consuls in foreign ports, and for the said registrar and his assistant, and also for the respective chief officers of the customs at the several ports of the United Kingdom and of the British possessions abroad, to demand from the master of every ship belonging to a subject of her majesty the production of the log book, muster roll of the ship, and such agreements, register tickets, indentures, and assignments as aforesaid, and a list of passengers and persons on board, and to muster the crew (including apprentices) of such ship, and to summon the master to appear before them, and give any explanation they may respectively require regarding the said crew, ship, or documents, for the purpose of ascertaining whether the provisions of this act, and every other act by which the crews of such ships as aforesaid are regulated, and the laws relating to navigation, have been kept and complied

Consuls, registrar, and officers of customs empowered to require production of the agreement, muster roll, &c.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

Penalty on master refusing to produce.

with, and to take copies of all or any of such documents; and if any such master, on such demand being made, shall refuse to produce such log book, muster roll, agreements, register tickets, indentures, and assignments, and list of passengers and persons, or refuse to allow copies to be taken, or shall refuse to permit his crew to be so mustered, or shall refuse to appear and give such explanation as aforesaid, or shall wilfully deceive or mislead the person before whom he shall so appear, he shall for every such neglect, refusal, or offence forfeit and pay the sum of 20*l.*"

Survey of provisions, &c.

If provisions are found insufficient, &c.

Sect. 57. "That it shall and may be lawful for any consul or vice consul of her majesty, and for any collector or comptroller of the customs, upon complaint made by any three or more of the crew, to survey and examine, or cause to be surveyed and examined, the provisions, water, and medicines put or supplied on board any ship for the use and consumption of the crew; and if on such survey and examination it shall be found that such provisions, water, or medicines are of a bad quality, or unfit for use, or not appropriate, or there shall not appear to be a sufficient quantity thereof, the surveying officer shall signify the same in writing to the master of the ship; and if such master shall not thereupon provide other fit and proper provisions, water, or medicines in lieu of any which may be signified by the said surviving officer to be of a bad quality, or unfit for use, or not appropriate, or if any such master shall not thereupon procure the requisite quantity of provisions, water, and medicines, or shall use any provisions, water, or medicines which shall have been signified by the surveying officer to be of a bad quality, or unfit for use, or not appropriate, he shall in each and every of such cases be guilty of a misdemeanor."

As to offences committed at foreign ports.

Sect. 58. "That all offences against the property or person of any subject of her majesty, or of any foreigner, which shall be committed in or at any port or place, either ashore or afloat, out of the dominions of her majesty, by the master and crew (including apprentices), or any or either of them, belonging to any ship subject to any of the provisions of this act, or who within three months before the committal of the offence shall have been the master thereof, or shall have formed part of any such crew, shall be and they are hereby declared to be offences of the same nature respectively, and to be liable to the same punishments respectively, as if they had been committed on the high seas and other places within the jurisdiction of the admiralty of England, and shall be inquired of, heard, tried, and determined and adjudged in the same manner as if such offences had been committed within such jurisdiction; and when any trial for such offences, or for any misdemeanor against the provisions of this act, shall take place before any justices or judges of oyer and terminer and gaol delivery, it shall be lawful for the court to order and direct the payment of the costs and expences of the prosecution, as in the case of costs and expences of prosecutions for offences committed within the jurisdiction of the admiralty of England."

For the safe custody and conveyance of offenders to England.

Sect. 59. "That whenever any complaint shall be made to any of her majesty's consuls or vice consuls of any such offence or of any offence having been committed at sea by the master and crew (including apprentices), or any or either of them, belonging to any ship subject to any of the provisions of this act, it shall be lawful for any such consul or vice-consul to inquire into the case, upon oath, and at his discretion to cause any offender to be placed under all necessary restraint, so far as it may be in his power, so that he may be sent and conveyed in safe custody to England as soon as practicable, in any vessel of her majesty, or of any of her subjects, to be there proceeded against according to law; and the costs and charges of imprisoning any such offender, and of conveying him and the witnesses to England, if not conveyed in the ship to which they respectively belong, shall be considered and deemed as part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of the United Kingdom left in distress in foreign parts; and all depositions taken before any consul or vice consul abroad, and certified under his official seal to be the depositions, and that they were

taken in the presence of the party accused, shall be admitted in evidence in all courts having criminal jurisdiction, and otherwise, in like manner as depositions taken before any justice of the peace in England now are or may be; and the register ticket of every offender shall be delivered up to her majesty's consul or vice consul, as the case may be, and be transmitted by him to the registrar of seamen."

2. *Merchant's Service.*

7 & 8 Vict. c. 112

Sect. 60. "That it shall be lawful for any consul or vice consul to order a passage to England for any such offender or offenders under necessary restraint, and also for the witnesses; and the master or other person having the charge of any ship or vessel belonging to any subject of her majesty bound for England shall and he is hereby required to receive and afford a passage and subsistence during the voyage to any such offender or offenders and witnesses, not exceeding the rate of one offender or two witnesses for every one hundred tons of his ship's burden; and on his ship's arrival in England the master of any vessel belonging to a subject of her majesty shall take or cause to be taken the offender or offenders before a justice of the peace, who shall deal with the matter as in cases of offences committed upon the high seas; and in case the master or other person having the charge of any ship or vessel belonging to any subject of her majesty, when required by the consul or vice consul to receive and afford a passage to any offender or witness, shall not receive and afford such passage, or shall not take or cause to be taken the offender or offenders before a justice of the peace as aforesaid, every such master shall be liable to a penalty of 50*l.*; and the seaman, if acquitted, shall receive his register ticket again upon due application to the registrar of seamen."

As to the conveyance of offenders and witnesses to England.

Sect. 61. "That this act shall not extend or apply to any ship registered in or belonging to any British colony having a legislative assembly, or to the crew of any such ship, while such ship shall be within the precincts of such colony; but every ship belonging to any colony or possession of her majesty, when proceeding from one part of the United Kingdom to another, or from the United Kingdom to the islands of Jersey, Guernsey, Alderney, Sark, or Man, or from any port in the United Kingdom to any port or possession of any foreign power or country, or to any colony to which the ship shall not belong, shall be held to come within the provisions of this act; and this act is hereby extended to the same; and the owner, master, and crew, including apprentices, of such ship so trading as aforesaid, shall be and are hereby declared liable to the provisions of this act as fully as the owner, master and crew of any British registered ship; and this act and the provisions thereof (except so far as the same relate to agreements, register tickets, and having apprentices,) shall also extend and apply to ships belonging to all of her majesty's colonies and possessions abroad, wherever otherwise proceeding or trading, and to the owners, masters, and crews of such ships, when any such ship shall be beyond the precincts of the colony or possession to which she shall belong; and all certificates and sanctions required by this act to be endorsed on agreements shall, in the case of ships last referred to, be otherwise given in writing where no written agreement exists."

As to ships belonging to British colonies.

Sect. 62. "That all penalties and forfeitures imposed by this act, and for the recovery whereof no specific mode is hereinbefore provided, shall and may be recovered, with costs, either in any of her majesty's courts of record at Westminster, Edinburgh, or Dublin, or in the colonies or territories under the government of the East India Company, at the suit of her majesty's law officers respectively, or at the suit of any person, by information and summary proceeding before any justice or justices of the peace, in and for any part of her majesty's dominions, or the territories under the government of the East India Company, where or near to the place where the offence shall be committed or the offender shall be; and if proceedings for the recovery of any forfeiture or penalty imposed by this act, or for the recovery of any debt due to her majesty, be commenced in any of her majesty's courts, the court in which such proceed-

Recovery of penalties.

2. *Merchant's Service.*

7 & 8 Vict. c. 112.

ings shall be instituted is hereby authorized to issue a commission or commissions in or out of her majesty's dominions for the examination of witnesses, and the depositions taken thereunder shall be used and admitted in evidence; and in case of a summary conviction under this act, and the sum imposed as a penalty by the justice or justices shall not be paid, either immediately after the conviction or within such period as the justice or justices shall at the time of the conviction appoint, it shall be lawful for the convicting justice or justices to commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice or justices, for any term not exceeding six calendar months, the commitment to be determinable upon payment of the amount and costs; and all penalties and forfeitures mentioned in this act. for which no specific application is hereinbefore provided, shall, when recovered, be paid and applied in manner following; (that is to say,) so much thereof as the court or the convicting justice or justices shall determine, but not exceeding one moiety, shall be paid to the informer or person upon whose discovery or information the same shall be recovered, and the residue shall be paid to the Seamen's Hospital Society: Provided always, that it shall be lawful for the court before which, or the justice or justices before whom, any proceedings shall be instituted for the recovery of any pecuniary penalty imposed by this act, to mitigate or reduce such penalty as to such court or justices respectively shall appear just and reasonable; but no such penalty shall be reduced to less than one-third of its original amount; and it shall be lawful, in the discretion of the said court, or of the said justice or justices hearing the complaint, to order such costs against the informing or complaining party failing to prove the charge as the said court or justice or justices may deem fit, and such costs shall be recoverable in the same manner as penalties under this act, and be paid as such court or justice or justices shall direct: Provided also, that all proceedings so to be instituted shall be commenced within two years next after the commission of the offence, if the same shall have been committed at or beyond the Cape of Good Hope or Cape Horn, or within one year if committed elsewhere, or within two calendar months after the return of the offender and the complaining party to the United Kingdom."

Application of forfeitures.

Definition of the terms "master," "seaman," "ship," and "owner."

Sect. 63. "And to avoid doubts in the construction of this act, be it enacted, That every person having the charge or command of any ship belonging to any subject of her majesty shall, within the meaning and for the purposes of this act, be deemed and taken to be the master of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a seaman, within the meaning and for the purposes of this act; and that the term 'ship' shall be taken and understood to comprehend every description of vessel navigating on any sea or channel, or waters outside the mouths of rivers, and also every vessel passing beyond the precincts of a port; and that the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the ship shall belong."

As to relief to persons from Asia and Africa becoming distressed in the United Kingdom.

Sect. 64. "That if any person, being a Malay, Lascar, or native of the territories under the government of the East India Company, or if any Asiatic or African seaman, having been brought to the United Kingdom on board any ship, shall be found or be in the United Kingdom in distress for want of food, clothing, or other necessaries, it shall and may be lawful for the commissioners for executing the office of lord high admiral of the United Kingdom, at their discretion, to supply necessary and reasonable relief to every such person and seaman, and to maintain him until he shall be sent on board some ship for the purpose of being conveyed to or near to the port from which he was shipped, and also to pay, defray, and advance the money necessary to procure every such person and seaman a proper and sufficient passage to such port; and all

such sum or sums of money as shall be paid and advanced by or by order of the said commissioners for or on account of such relief, maintenance, and passage shall be and become a debt due to her majesty, and be recoverable as such, with full costs of suit, in the courts of law either in her majesty's dominions or in the territories under the government of the East India Company, from the owner and master, or either of them, of the ship on board whereof such person or seaman shall have been brought from Asia or Africa; but nothing herein contained shall repeal or annul any other act or acts now in force for the relief and conveyance home of any Asiatic or African person or seaman."

3. *Assaulting Seamen, &c.*

7 & 8 Vict. c. 112.

III. Assaulting Seamen, &c., to prevent them Working.

Assault on seaman, &c., to prevent him from working.

By 9 Geo. IV. c. 31, s. 26, "If any person shall unlawfully and with force hinder any seaman, keelman, or caster from working at or exercising his lawful trade, business, or occupation, or shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from" working at or exercising the same, "every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three calendar months: Provided always, that no person, who shall be punished for any such offence by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever." See this offence, and the forms and proceedings relative thereto, already considered, *ante*, "*Assault*," Vol. I. p. 298.

IV. Assaulting Commanders to hinder them from Fighting.

See this offence considered, *ante*, "*Piracy*."

V. Forms.

No. 2.—SCHEDULE (A.) to which the 4 & 5 WILL. IV. c. 52, refers.

A List and Account of the Crew (including the Master and Apprentices) of the Ship of the Port of whereof is Master, at the period of her Departure from the Port of in the United Kingdom, and on her Return to the Port of in the United Kingdom, and also of those who have joined the Ship at any Time during the Voyage.

Men's Name.	Place of Birth.	Place and Time of Entry.				Place and Time of Discharge, or leaving the Ship.				When and where received Hurt or damaged.	When or where killed or drowned, or died a natural Death.	Wages due at Time of Death.			What Clothes or other Effects any deceased Man has left.	Amount of Monthly Duty.
			Day.	Month.	Year.		Day.	Month.	Year.			£	s.	d.		

SCHEDULES to which the 7 & 8 VICT. c. 112, refers.

SCHEDULE (A.)

An Agreement made pursuant to the Directions of an Act of Parliament passed in the Year of the Reign of between the Master of the Ship of the Port of and of the Burden of Tons, and the several Persons whose Names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the several capacities against their respective names expressed on a voyage from the port of to [*here the intended voyage is to be described as nearly as can be done, and the places at which it is intended the ship shall touch, or, if that cannot be done, the nature of the voyage in which she is to be employed*]; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent to their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ships, in boats, or on shore [*here may be inserted any other clauses which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to or inconsistent with the provisions and spirit of this act*]; in consideration of which services, to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise and agree to pay to the said crew by way of compensation or wages the amount against their names respectively expressed: And it is hereby agreed, that any embezzlement, or wilful or negligent loss or destruction, of any part of the ship's cargo or stores, shall be made good to the owner out of the wages (so far as they will extend) of the seaman guilty of the same; and if any seaman shall have entered himself as qualified for a duty to which he shall prove to be not competent he shall be subject to a reduction of the rate of wages hereby agreed for, in proportion to his incompetency. In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

No. and Date of Ship's Register.	Place and Time of Entry.				Men's Names. Christian and Surnames set forth at full Length.	Age.	Town or County where born.	Quality.	Amount of Wages per Calendar Month, Share or Voyage.	Amount of Wages advanced at Time of Entry.	Amount of Monthly Allotment.	Quantity of Provisions per Day.	Witness to Signature.	Name of Ship in which the Seaman last served.	Number of Register Ticket.
		Day.	Mth.	Year.											

I hereby declare to the truth of all the particulars set forth in this agreement [*or* this attested copy of agreement], delivered to the collector or comptroller of the port of this day of 18 .

Master.
Mate.

Note.—This agreement, or an attested copy thereof, is required to be delivered to the collector and comptroller of customs within twenty-four hours after the arrival of the ship at her final port of destination in the United Kingdom.

SCHEDULE (B.)

An Agreement made pursuant to the Directions of an Act of Parliament passed in the Year of the Reign of between the Master of the Ship of the Port of and of the Burden of Tons, and the several Persons whose Names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the said several capacities against their respective names expressed, which ship is to be employed in [*here the nature of the ship's employment is to be described, whether in the fisheries, on the coast, or in proceeding from one part of the United Kingdom to another, or to any of the islands of Jersey, Guernsey, Alderney, Sark, and Man, or to any part of the Continent of Europe between the river Elbe inclusive and Brest*]; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent to their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores, and cargo thereof, whether on board such ship, in boats, or on shore [*here may be inserted any other clauses which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to or inconsistent with the provisions and spirit of this act*]; in consideration of which services, to be duly, honestly, carefully, and faithfully performed, the said master doth hereby promise to pay to the said crew by way of compensation or wages the amount against their names respectively expressed: Provided always, and it is hereby declared, that no seaman shall be entitled to his discharge from the ship during any voyage in which she may be engaged, nor at any other port than a port in the United Kingdom: And it is hereby agreed, that any embezzlement, or wilful or negligent loss or destruction, of any part of the ship's cargo or stores, shall be made good to the owner out of the wages (so far as they will extend) of the seaman guilty of the same; and if any seaman shall have entered himself as qualified for a duty to which he shall prove to be not competent he shall be subject to a reduction of the rate of wages hereby agreed for, in proportion to his incompetency. In witness whereof the said parties have hereto subscribed their Names on the days against their respective signatures mentioned.

No. and Date of Ship's Register.	Place and Time of Entry.				Men's Names. Christian and Surnames set forth at full Length.	Age.	Town or Country where born.	Quality.	Amount of Wages per Calendar Month, Share or Voyage.	Quantity of Provisions per Day.	Witness to Signature.	Name of Ship in which the Seaman last served.	Number of Register Ticket.
		Day.	Month.	Year.									

I hereby declare to the truth of all the particulars set forth in this agreement [*or* attested copy of agreement] delivered to the collector or comptroller of the port of this day of 18 .

Master.
Mate.

Note.—This agreement, or an attested copy thereof, is required to be delivered to the collector or comptroller of customs of any port of the United Kingdom within thirty days after the 30th of June and the 31st of December in each year.

SCHEDULE (C.)

Ship of the Port of of the Burden of Tons, whereof was Master.

A List of the Crew (including the Master and Apprentices) at the Period of quitting the Port of in the United Kingdom, from which she took her first Departure on her Voyage to on the Day of and of the Men who joined the Ship subsequent to such Departure, and until her return to the Port of being her first final Port of Destination in the United Kingdom on the Day of 184 .

No. and Date of Ship's Register.	Name. Christian and Surname at full length.	Age.	Town or County where born.	Quality.	Ship in which he last served.	Date of joining the Ship.	Place where.	Time of death or leaving the Ship.	Place where.	How disposed of.	Date of Apprentices' Indentures and Assignment.	When and where registered.	Numbers of Register Tickets.

Note.—If any one of the crew has entered Her Majesty's service, the name of the Queen's ship in which he entered must be stated in the account, under the head of "How disposed of."

Note.—This list to be filled up and signed by the master of every vessel, of whatever tonnage, and to be delivered by him to the collector or comptroller of the customs within twenty-four hours after the ship's arrival at her final port of destination in the United Kingdom.

SCHEDULE (D.)

An Account of the Voyages in which the Ship of of the Burden of Tons has been engaged, in the Half Year commencing on the Day of 18 , and ending on the Day of 18 and of all the Persons (Masters and Apprentices included) who have belonged to such Ship during that Period.

Account of the Voyages.

[*Here the several Voyages, and the Periods of such Voyages, are to be described.*]

Account of the Crew.

No. and Date of Ship's Register.	Name. Christian and Surname full Length.	Age.	Town or County where born.	Quality.	Ship in which he last served.	Date of joining the Ship.	Place where.	Time of Death or leaving the Ship.	Place where.	How disposed of.	Date of Apprentices' Indentures and Assignments.	When and where registered.	Numbers of Register Tickets.

Note.—If any one of the crew shall have entered Her Majesty's service, the name of the Queen's ship in which he entered must be stated in this account, under the head of "How disposed of."

Note.—This account, when filled up, is to be signed by the owner or master of every ship, of whatever tonnage, and deposited with the collector or comptroller of the customs of any port of the United Kingdom within twenty-one days after the 30th of June and the 31st of December in every year.

SCHEDULE (E.)

This is to certify, That whose register ticket is numbered served as on board the of the port of of the burden of tons, from the day of to the day of and that he was discharged from the said ship on at .
Dated this day of 184 .

Master.

SCHEDULE (F.)

1. What is your christian and surname?
2. Have you or have you not been registered before?
3. Where were you born, and when?
4. When did you first go to sea?
5. In what capacity did you go, and in what capacity have you since served?
6. Have you or have you not served in the royal navy?
7. If you have, how long? and in what ships? and in what capacity?
8. Have you or have you not been in foreign service?
9. If you have, how long? and in what capacity? and under what flag?
10. How have you been generally employed at sea?
11. Where is your usual place of residence when unemployed?

SCHEDULE (G.)

Names, and distinguishing Numbers of the Register Tickets, of the Crew (including Apprentices) now serving on board the of the Port of of the Burden of Tons, on taking Departure from the Port of in the United Kingdom, bound on a Voyage to .

No. and Date of Ship's Register.	Name.	Capacity.	Number of Register Ticket.

Dated this day of 184 .
Particulars to be clearly and legibly set forth.

SCHEDULE (H.)

Form of Parish Apprentice's Indenture.

This indenture, made the day of in the year of our Lord one thousand eight hundred and witnesseth, That over-

5. *Forms.*

7 & 8 Vict. c. 112.

seers of the poor of the [parish] of (*a*) in the division of in the county of in the presence of and two of her majesty's justices of the peace in and for the said county acting in and for the said division in which the said [parish *or* union] is situate, do by this indenture, duly executed by the said justices in testimony of their having been satisfied that the boy hereby and hereafter bound and named hath attained the age hereinafter mentioned, and is of sufficient health and strength as required by the statute in such case made and provided, bind, put out, and place, with his own free will and consent, and not otherwise, a poor boy of the said [parish *or* union], aged years, as appears by the copy of the entry of his baptism in the register book of the parish of in the county of hereunto annexed (*b*) who is now [and whose parents and] are now chargeable to and maintained by the said [parish] of apprentice in the sea service to one of her majesty's subjects of the [parish] of in the county of being the master (*c*) of the ship called registered in the port of being a port of the United Kingdom of Great Britain and Ireland, with him the said his executors and administrators and the assign or assigns of the widow or of the executors and administrators of the said to dwell, remain, and serve from the day of the date of these presents for so long time and until the said apprentice shall attain the age of twenty-one years; during all which term the said apprentice, his said master, his executors and administrators, or the assign or assigns of the widow or of the executors or administrators of the said shall well and faithfully serve; his and their secrets keep; his and their lawful commands everywhere gladly do and execute; hurt or damage to his said master, his executors or administrators, or the said assign or assigns, he shall not do, consent or see to be done by others, but to the utmost of his power shall hinder the same, and forthwith his said master, his executors or administrators, or the said assign or assigns, thereof warn; taverns or alehouses he shall not frequent; at dice, cards, tables, bowls, or any other unlawful games he shall not play; the goods of his said master, his executors or administrators, or the said assign or assigns, he shall not embezzle or waste, or lend or give to any person or persons without his or their license; nor from the service of his said master, his executors or administrators, or the said assign or assigns, without his or their consent, at any time absent himself; but as a true and faithful apprentice in all lawful business, according to his power, wit, and ability, and honestly, orderly, and obediently in all things, shall demean and behave himself toward his said master, his executors or administrators, or the said assign or assigns, during the said term; and true and just accounts of his or their goods, chattels, and money committed to his charge, or which shall come to his hands, faithfully he shall give at all times, when thereunto required by him or them; and shall also render an account of, and well and truly pay or cause to be paid to him or them, all such wages, prize money, and other sum or sums of money as shall become due and payable unto him the said apprentice from her majesty, her heirs, successors, or any other person, in case he shall enter or go into her majesty's service during the said term. In consideration whereof, and of the sum of of lawful money of the United Kingdom of Great Britain and Ireland to him in hand well and truly paid at the execution of these presents (the receipt whereof the said doth hereby acknowledge), he the said for himself, his executors or administrators, doth hereby covenant, promise, and agree to and with the said overseers of the poor, and their successors, that he the said his executors or administrators, and the assign or assigns of his widow or of his executors or administrators, the said apprentice in the art, trade, or business of a mariner or seaman, with the circumstances thereunto belonging, shall and will, until he shall attain the age of twenty-one years,

(*a*) Or it may be made by other persons having the authority of overseers or guardians, or in whom the duty of overseers or guardians of the poor shall be vested.

(*b*) The copy must be given and attested by the officiating minister, without fee or reward. If it cannot be found, erase the words from "by the" "to annexed," and insert "from such information of such boy's age as the said justices have been able to obtain, as the entry of his baptism cannot be found." The apprentice must be above twelve and under seventeen years of age, and bound for four years at the least.

(*c*) Or owner.

5. *Forms.*

7 & 8 Vict. c. 112.

teach, learn, and instruct, or cause to be taught, learned, and instructed, in the best way and manner that he or they can; and shall and will find, provide, and allow unto the said apprentice, competent and sufficient meat and drink, apparel, lodging, washing, medicine, medical and surgical aid and advice, and all other things necessary and fit for an apprentice.

And also shall and will so provide for the said apprentice that he be not any way a charge to the said [parish *or* union] of or parishioners thereof; but of and from all charge shall and will save the [parish *or* union] of and parishioners thereof harmless and indemnified during the said term. In witness whereof the said justices, and other parties abovesaid to the present indenture, interchangeably have set their hands and seals the day and year first above written.

Signed, sealed, and delivered in the presence of .

We, the guardians of the poor of the [union, within which the said parish is included] do hereby testify our consent to the binding of the said to the said and have hereunto caused our official seal to be affixed, at a meeting of the board this day of

(Signed)

Clerk to the said guardians.

Seal of the Board of Guardians.

Presiding Chairman.

SCHEDULE I.

Form of Apprentice's Indenture.

This Indenture, made the day of in the year of the reign of her majesty Queen Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, and in the year of our Lord one thousand eight hundred and between aged years, a native of in the county of of the one part, and of in the county of of the other part, witnesseth, that the said hath of his free will put and bound himself apprentice unto the said with him, his executors, administrators, and assigns, after the manner of an apprentice to dwell, remain, and serve from the day of the date hereof for and during and until the full end and term of years from thence next ensuing fully to be complete and ended; during all which term the said apprentice his said master shall well and faithfully serve; his secrets keep; his lawful commands everywhere do and execute; hurt or damage to his said master he shall not do, consent or see to be done by others, but to the utmost of his power shall hinder the same, and forthwith his said master thereof warn; taverns or alehouses he shall not frequent (unless about his said master's business); at dice, cards, tables, bowls, or any other unlawful games he shall not play; the goods of his said master he shall not embezzle or waste, or lend or give to any person or persons without his said master's licence; nor from the service of his said master, without his consent, at any time absent himself; but as a true and faithful apprentice shall demean and behave himself towards his said master, his executors, administrators, or assigns, during the said term; and true and just accounts of his said master's goods, chattels, and money committed to his charge, or which shall come to his hands, faithfully he shall give at all times, when thereunto required by his said master, his executors, administrators, or assigns; and shall also render an account of, and well and truly pay or cause to be paid unto his said master, his executors, administrators, or assigns, all such wages, prize-money, and other sum or sums of money as shall become due and payable unto him from her majesty, her heirs, successors, or any other person, in case he shall be impressed, enter, or go into

5. *Forms.*

7 & 8 Vict. c. 112.

her majesty's service during the said term. In consideration whereof the said doth hereby covenant and agree to and with the said the apprentice, that he the said , his executors, administrators, or assigns, during the said term of years, shall and will teach, learn, and inform the said apprentice, or cause him to be taught, learned, and informed, in the art, trade, or business of a mariner or seaman, with the circumstances thereunto belonging; and shall and will find and provide for the said apprentice sufficient meat, drink, washing, lodging, medicine, and medical and surgical aid and advice to pay unto the said apprentice the sum of pounds of lawful money of Great Britain, in manner following; (that is to say,) the said finding and providing to and for himself all manner of sea bedding, wearing apparel, and other necessaries (except meat, drink, lodging, washing, medicine and medical and surgical aid and advice): and it is hereby agreed between the said parties, that the said shall and may from time to time during the said term deduct and retain in his hands, out of the several yearly payments above mentioned, all such sum or sums of money as he shall at any time during the said term disburse or lay out in the buying of any apparel or sea bedding for the said apprentice, as need shall require: and for the true performance of all and singular the covenants and agreements aforesaid, each of them the said and doth hereby bind and oblige himself, his heirs, executors, and administrators, unto the other of them, his executors and administrators, firmly by these presents, in the penal sum of pounds of lawful money of Great Britain.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year above written.

Signed, sealed, and delivered in the presence of us }

[*The End of Schedules to* 7 & 8 *Vict. c.* 112.]

(1.) Information on 7 & 8 Vict. c. 112, s. 4, against a master for not having a written contract as to wages, &c. (*a*).

County of } The information and complaint of A. I., of the parish of in the county of , mariner, made and exhibited before J. P., esq., one of her majesty's justices of the peace of and for the said county of , on the day of , in the year of our Lord , at , in the said county, upon his oath duly administered to him, and who upon his oath saith, that A. O., late of , mariner, on, &c., at, &c., being then and there master [or, *owner*, as the case may be], *of a certain vessel called , belonging to , a subject of her majesty, and then bound on a certain voyage, to wit, from , in England, and proceeding to parts beyond the seas, to wit, in did carry A. I., a seaman (not being an apprentice) as one of his crew* [or *complement*], *and not as an apprentice on board the said vessel, he the said A. O., not having first made or entered into any agreement in writing with the said A. I. for or in respect of the wages of the said A. I. for the said voyage or otherwise, in manner and form as by the statute in that behalf is directed, contrary to the form of the statute in such case made and provided. Whereby the said A. O. forfeited for his said offence, the sum of £ , and thereupon the said A. I. prayeth that the said A. O. may be summoned to answer the premises before one of her majesty's justices of the peace in and for the said county.*

A. I.

Sworn before me, J. P.

(2.) Information of mariner in merchant service against his master for refusing to pay wages not

County of } The information and complaint of A. I. late of in the county of , mariner, exhibited before me, J. P., esq., one of her majesty's justices of the peace in and for the county of , and residing in and near [or, *near*] *the place where one A. O. now is* [*or*, "where the ship hereafter mentioned ended her voyage hereafter mentioned,"]

(*a*) *See ante*, 813. *See* the form of summons, *post*, 837. *See* the general form of conviction, *title* "*Conviction*," Vol. I.; and of the warrant of distress, *see title* "*Distress under Justice's Warrant*," Vol. II.; and of the commitment, *see title* "*Commitment in Execution*," Vol. I.

&c., the day of , in the year of our Lord one thousand eight hundred and , who being sworn on his oath, says, that on the day of , in the year of our Lord one thousand eight hundred and , he was hired by the said A. O., of , in the county aforesaid, master [or, *commander*] *of a certain ship called the , to serve him as a seaman* [or, *mariner*, as the case may be], *and not as an apprentice, or master, on board the said ship, from the port and place of in England, to the port of , beyond the seas* [or, *in Great Britain*; or, *for the term of* , as the case may be], *for the wages of per month* [as the case may be]. *and that he the said A. I. has duly performed the said service and hiring for the term of* [*two months*], *and that he the said A. I., on the day of last, was discharged from the said hiring and ship by the said A. O.* [as the case may be], *at , in the said county of ; and that although* [*two days*] *from the time of the said* [*discharge*] *hath elapsed, and although no agreement hath been made or entered into to the contrary* [as the case may be], *he the said A. O. neglects and refuses to pay him the said A. I. the sum of , being the wages justly due unto him the said A. I. for the said service, contrary to the form of the statute in such case made and provided: and thereupon he the said A. I. prays that justice may be done, and that the said A. O. may be summoned before me, the justice aforesaid, to answer unto the said complaint.*

Before me, J. P. *A. I.*

5. *Forms.* exceeding 20*l.* on 7 & 8 Vict. c. 112.

County of } *To the Constable of , in the said county.*

(3.) Summons thereon.

Whereas information and complaint have been made unto me J. P., esq., one of her majesty's justices of the peace in and for the said county of , upon the oath of A. I., late of , in the county of , mariner, that, &c. [here set forth the complaint, as in the preceding form]. *These are therefore to command you forthwith to summon the said A. O. to appear before me, at , in the said county of , on , the day of* [*this present*] *month of , at the hour of , in the forenoon of the same day, to show cause why the said wages should not be paid. And be you then there to certify what you shall have done. Dated this day of in the year of our Lord one thousand eight hundred and*

County of } *Whereas information and complaint have been made unto me, J. P., esq., one of her majesty's justices of the peace in and for the said county of , and residing in and near* [or, *near*] *the place where one A. O. now is, upon the oath of A. I., late of , in the county of , mariner, that on the day of , in the year of our Lord one thousand eight hundred and , he the said A. I. was hired by A. O., &c.* [here state the complaint, down to the words "*contrary to the form of the statute*," &c., inclusive, and then proceed as follows]: *and whereas the said A. O., having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages justly due unto the said A. I. as aforesaid, have been duly paid unto him the said A. I., nor hath showed to me any just cause why the said wages should not be paid, and hath not paid the same* [or, *and whereas it appears to me upon the oath of A. C., constable of aforesaid, that he the said A. C., by virtue of my summons to him directed, did duly summon the said A. O. to appear before me, at a certain time and place therein specified, to show cause why the said wages should not be paid, and the said A. O. hath neglected to appear according to the said summons, and hath not shown any cause why the said wages should not be paid, and hath not paid the same*]: *I, therefore, having duly examined into the truth and matter of the said complaint, by the oaths of the said A. I. and of the witnesses produced by him and the said A. O. respectively* [as the case may be], *and upon due consideration had thereof, do hereby adjudge and determine, that there is now justly due and owing from the said A. O. to the said A. I., for and in respect of the wages assessed the sum of £——— and I do hereby further adjudge, determine, and order, that the said A. O., do forthwith* [or, *on the day of*] *pay him the said A. I., the sum of ; and I do also hereby further adjudge*

(4.) Order for payment of wages.

5a Forms 7 & 8 Vict. c. 112.

and order, that the said A. O. do also forthwith pay to the said A. I., the sum of , being the amount of the costs incurred by the said A. I. in prosecuting his claim before me in this behalf, and which appears to me to be just and reasonable to be paid by the said A. O. to the said A. I. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and .

J. P.

(5.) Warrant of distress for non-payment (a).

County of } To the Constable of

Whereas A. I., late of , in the county of , mariner, on complained on oath unto me, J. P., esq., one of her majesty's justices of the peace in and for the county of , and residing, &c. [as in preceding forms], *that on, &c., he was hired by A. O., of, &c.* [here state the complaint down to the words, "*contrary to the form of the statute,*" &c. inclusive, and then proceed as follows] : *and whereas the said A. O. having appeared before me in pursuance of my summons for that purpose, has not proved to me that the wages justly due unto the said A. I. as aforesaid, have been paid to him the said A. I., nor has showed any just cause why the same should not be paid, and has not paid the same;* [or, *and whereas the said A. O. has been duly summoned by me to show cause why the said wages should not be paid; but he the said A. O. has neglected to appear according to the said summons, and has not showed any cause why the said wages should not be paid, and has not paid the same;*] *I, therefore, the said justice, upon due examination and consideration of the said complaint, and having examined the said A. I. and A. O., and their respective witnesses on oath touching the said complaint and the amount of the wages due on the day of , now last past, by writing, under my hand and seal, did thereupon adjudge, determine, and order that, &c.* [set out the adjudicating part of the order in the past tense] ; *and whereas it has been duly proved to me that the said A. O., on the said day of , now last past, had due notice of my said order, and that due demand of the said sums of and was then made of him the said A. O., by him the said A. I., at , in the said county of , in which port the said ship now lies, but that he the said A. O. did not then pay nor has yet paid the same, nor any part thereof; these are therefore to command you to make distress of the goods and chattels of the said A. O., or other person having or taking the charge or command of the said ship or vessel called the , and if within the space of days next after such distress by you made, the said sum of , together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of unto him the said A. I., rendering the overplus* [if any there be,] *after deducting all the costs, charges, and expenses of any summonses, informations, complaints, hearings, warrants, and of such distress, and the keeping, appraisement, or sale thereof, or otherwise relating thereto, unto the person or persons whose goods and chattels shall be so distrained and sold. And in case sufficient distress shall not be found for payment and satisfaction of wages and costs so ordered to be paid, and the same with such costs, charges, and expenses as aforesaid shall not be paid, that then you do certify the same to me, together with the return of this warrant. Given under my hand and seal, the day of , in the year of our Lord, one thousand eight hundred and .*

J. P.

(6.) Warrant of distress for the same on the ship, &c., in case other sufficient distress be not found, &c. (a).

County of } To the Constable of

Whereas A. I., late of , in the county of , mariner, has complained on oath unto me J. P., esq., one of her majesty's justices of the peace in and for the county of , and residing, &c., [as in Form, No. 2,] *that on the day of , in the year of our Lord one thousand eight hundred and*

(a) As to warrant of distress in general, *see title "Distress under Justice's Warrant,"* Vol. II.

(b) It would seem that this warrant might be issued in the first instance without waiting for a return to a warrant of distress.

5. *Forms.*

7 & 8 Vict. c. 112.

he was hired by A. O., of, &c. [here state the complaint down to the words "*contrary to the form of the statute,*" &c. inclusive, and then proceed as follows] *and whereas the said A. O., having appeared before me in pursuance of my summons for that purpose, has not proved to me that the wages justly due unto the said A. I. as aforesaid, have been paid to him the said A. K., nor has showed any just cause why the same should not be paid, and has not paid the same:* [or, *and whereas the said A. O. has been duly summoned by me, to show cause why the said wages should not be paid; but he the said A. O. has neglected to appear according to the said summons, and has not showed any cause why the said wages should not be paid, and has not paid the same:*] *I, the said justice, the afore, upon due examination and consideration had thereof on the day of , now last past, by writing under my hand and seal, did thereupon adjudge, determine, and order that, &c.* [proceed as in the adjudicating of the order]. *And whereas it has been duly proved to me the said A. O., on the said day of , now last past, had due notice of the said order, and that due demand of the said sum of, was then made of him the said A. O., by the said A. I. at , in the said county of , but that he the said A. O. did not then pay nor has yet paid the same, nor any part thereof. And whereas on the day of , I, the said justice, did issue my warrant to the constable of , to make distress of the goods and chattels of the said A. O., or other person having or taking the charge or command of the said ship or vessel called the , and to levy the said sum of , and to pay the same according to the directions of the statute. And whereas it duly appears unto me, the said justice, as well upon the oath of the said constable of , as otherwise, that he, the said constable of , has used his best endeavours to levy the said sum of on the goods and chattels of the said A. O. as aforesaid, and other persons having or taking the charge or command of the said ship or vessel called the , but that no sufficient distress can be so found whereon to levy the same. These are therefore to command you to levy the amount of the wages so ordered to be paid, together with the costs, charges, and expenses of the summonses, informations, complaints, hearings, and warrants of distress respecting the same, on the said ship or vessel, for the service on board which such wages have been and are so ordered to be paid, or on any of the tackle, furniture, or apparel thereof: and if within the space of days after such distress by you made, the said sum for wages so ordered to be paid, and the said costs, charges and expenses as aforesaid, together with the reasonable charges of taking the said distress, shall not be paid, that then you do sell the said ship, tackle, furniture, or apparel thereof, so by you distrained; and out of the money arising by such sale, that you pay the said amount of the wages so ordered to be paid, together with the costs, charges, and expenses of the summonses, informations, complaints, hearings, and warrants of distress respecting the same, unto him the said A. I., rendering the overplus thereof* [if any], *upon demand, unto the master or commander, or owner thereof, the reasonable charges of taking, keeping, and selling the said distress, being thereout first deducted. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and .* *J. P.* (L. S.)

(7.) Indictment on the 7 & 8 Vict. c. 112, s. 47. for forcing a seaman on shore.

Middlesex } *The jurors for our lady the Queen upon their oath present,*
to wit. } *that C. D., late of the parish of in the said county, mariner, on the day of , in the year of the reign of our lady the now Queen Victoria, being then master of a certain merchant vessel called the , did, whilst he was abroad with such vessel on the high seas, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully force on shore one A. B., the said A. B. being then and there a man belonging to the said vessel: against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.*

Search Warrant.

Search without warrant.

IF goods, feloniously stolen, be on the premises of the felon or of an accessory to the felony, or be brought or deposited there by the felon with a knowledge, by the owner of the premises, of the felony, it would seem that an entry on them for the purpose of searching for and retaking the goods, might be made by any party without warrant, provided the outer door be open. In general, however, it is safest and best to obtain a magistrate's warrant for the search; and clearly the party making such entry would not be justified in doing so without such warrant, if it turned out that the goods were not on the premises, nor could outer doors be broken open unless under such a warrant. As to the right of entry on the premises of another, for the purpose of recapturing goods wrongfully detained, *see "Forcible Entry,"* Vol. III. p. 73, n. (*b*).

Search-warrants, in what cases.

In the case of a complaint, and *oath* made of goods stolen, and that the party suspects that goods are in such house, *and shows the cause of his suspicion*, the justice of peace may grant a warrant to search in those suspected places mentioned in his warrant, and to attach the goods, and the party in whose custody they are found, and bring them before him, or some other justice of peace, to give an account how he came by them, and farther to abide such order as to law shall appertain. (*Vide Dalt. c.* 169, *p.* 403; 2 *Hale*, 113, 150; 2 *Wils.* 291.)

On oath.

However, a *positive* oath that a felony is *actually committed*, is not necessary to justify a magistrate in granting this warrant. (*Else* v. *Smith*, 1 *D. & R.* 97, *in error.*) *Et per Abbott*, C. J.:—"There are many cases in which a cautious man might not choose to swear that his property is stolen, and, nevertheless, he might have great reason to suspect a particular party, and the magistrate would be well warranted in granting his search warrant. Suppose the case of a horse, which has been lost by its owner, and it is found in the possession of another person; the owner in that case, might not like to take upon himself to swear that the horse has been stolen, for it might have strayed; but when he finds his horse concealed in the stable of another person, he may very naturally conclude it must have been stolen, from the circumstance of the concealment; and, therefore, he may very conscientiously swear he suspects it to have been stolen. If, under such circumstances, the magistrate is not authorized in issuing his search warrant, it might happen, in many cases, that felonies would go undetected."

Bare surmise.

It is clear, that upon a *bare surmise*, a justice cannot make a warrant to break any man's house, to search for a felon, or for stolen goods; for the justices, being created by act of parliament, have no such authority granted to them by any act of parliament; and it would be full of inconvenience that it should be in the power of any justice of the peace, being a judge of record, upon a bare suggestion, to break the house of any person, of what state, quality, or degree soever, either in the day or night, upon such surmises. (4 *Inst.* 177.)

In larceny, and other offences of that kind.

Independently of this general power which a justice has by virtue of his commission to grant a search warrant, statutes have been passed enlarging his jurisdiction in this respect. And by 7 & 8 Geo. IV. c. 29, (the act against larceny and other offences of a similar description,) s. 63, "If any credible witness shall prove, upon oath before a justice of the peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any such offence [that is, any offence punishable by indictment under this act] shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and any person, to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been

committed on or with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law."

As to felonies, this new enactment makes no alteration in the law; but as to *misdemeanors*, it much extends the authority of the magistrate. In misdemeanors.

There are other statutes relative to coining, having in possession naval and military stores, and to the taking of idle and disorderly persons, in order to recruit the land forces and marines, containing powers to issue search-warrants; and under the Vagrant Act, a justice may order the trunks, bundles, &c. of vagrants to be inspected; and he may grant his warrant to search lodging-houses, &c. suspected to conceal vagrants. A justice is also empowered to grant a warrant for the search of the goods of a bankrupt suspected to be concealed. (*See the respective titles*, "*Bankrupt*," "*Coin*," "*Stores*." "*Vagrants*.") In other cases.

As to the apprehension of the offenders themselves, *see* "*Arrest*," Vol. I.; *post*, "*Warrant*," Vol. VI. Apprehension of offenders.

The warrant ought to be directed to a constable, or other public officer, and not to any private person; though it is fit the party complaining should be present and assistant, because he knows his goods. (2 *Hale*, 150.) The search-warrant granted under the 6 Geo. IV. c. 16, s. 29, in bankruptcy, should not be so to any one but the messenger under the fiat. (*Sly* v. *Stevenson*, 2 *C. & P.* 454.) *See* "*Bankrupt*," Vol. I. p. 364. Form of warrant.

The warrant commands, that the goods found, together with the party in whose custody they are taken, be brought before some justice of the peace, to the end that, upon further examination of the fact, the goods and the prisoner may be disposed of as the law directs. (2 *Hale*, 150.)

Lord *Hale* says, "It is fit that these warrants to search do express that search be made in the *day time;* and though I will not say that they are unlawful without such restriction, yet they are very inconvenient without it; for many times, under pretence of searches made in the night, robberies and burglaries have been committed; and at best it creates great disturbances." (2 *Hale*, 150.) But, in cases not of probable suspicion only, but of positive proof thereof, it is right to execute the warrant in the night-time, lest the offenders and goods also be gone before morning. (*Barl. Search-War.*)

As to the date, *see* "*Commitment*," Vol. I.; "*Warrant*," Vol. VI.

Formerly it was usual for justices to grant general warrants, to search all suspected places for stolen goods; and there is a precedent in *Dalton*, requiring the constable to search *all such suspected places as he and the party complaining shall think convenient;* yet such practice is generally condemned by the best authorities. Thus, Lord *Hale*, in his *Summary of Pleas of the Crown*, says, a general warrant to search all places for felonies or stolen goods, is not good. (*Hale's Sum.* 93.) Mr. *Hawkins* says: "I do not find any good authority, that a justice can justify sending a general warrant, to search all suspected houses in general for stolen goods: because such warrant seems to be illegal on the very face of it; for it would be extremely hard to leave it to the discretion of a common officer to arrest what persons, and search what houses, he thinks fit; and if a justice cannot legally grant a blank warrant for the arrest of a single person, leaving it to the party to fill up, surely he cannot grant such a general warrant, which might have the effect of a hundred blank warrants." (2 *Haw. c.* 13, *s.* 10, 17.) Again, Lord *Hale*, in his *History of the Pleas of the Crown*, 2 *Hale*, 150, expresseth himself thus: "I do take it, that a general warrant to search in all suspected places is not good, but only to search in such particular places where the party assigns before the justice his suspicion, and the probable causes thereof; for these warrants are judicial acts, and must be granted upon examination of the fact. And therefore I take those general warrants dormant, which are many times made before any felony committed, are not justifiable, for it makes General warrants condemned.

the party to be in effect the judge; and therefore searches made by pretence of such general warrants give no more power to the officer or party than what they may do by law without them." As to a general warrant in the case of inspectors of weights and measures, *see Hutchinson* v *Reeves*, 9 *M. & Wel.* 757; *post*, "*Weights and Measures*," Vol. VI. p. 415.

Execution of warrant.

Whether the stolen goods are in a suspected house or not, the officer and his assistants in the day-time may enter, the doors being open, to make search, and it is justifiable by the warrant. (2 *Hale*, 151; *see further*, "*Warrant*," Vol. VI.) The owner of the goods, or some person who can point them out, usually accompanies the officer.

If the door be shut, and, upon demand, it be refused to be opened by them within, if the stolen goods be in the house, the officer may break open the door. (2 *Hale*, 151.)

If the goods be not in the house, yet it seems the officer is excused that breaks open the door to search, because he searched by warrant, and could not know whether the goods were there till search made: but the party that made the suggestion is as it is said punishable in such case; for, as to him, the breaking of the door is, *in eventu*, lawful or unlawful—to wit, lawful, if the goods are there; unlawful, if not there. (2 *Hale*, 151.) It is apprehended, however, that the party could not be thus punishable (*i. e.* by action), unless he acted maliciously and without probable cause.

The warrant must of course be executed within the jurisdiction of the justice. As regards the power of constables to act in any place within the jurisdiction of the justices who grant the warrant, see the 5 Geo. IV. c. 18, s. 6, *title* "*Arrest*," Vol. I.

The officer must strictly observe the directions of the warrant, and if he be directed to seize only stolen sugar, and seize tea, he will be a trespasser. (*Price* v. *Messenger*, 2 *B. & P.* 158; *Bell* v. *Oakley*, 2 *M. & Sel.* 261.)

A warrant, under the Vagrant Act, to search all suspected houses, for idle and disorderly persons, is strictly confined to persons of that description, and the officer will not be justified if he attempt to execute it in any other places than those intended by the statute. (1 *Leach*, 208.)

A warrant directing a search in a particular house only, would not justify a search in another.

Where a constable, having a warrant to search for specific articles alleged to have been stolen, found and took away those, and certain others supposed to have been also stolen, but which were not mentioned in the warrant, and not likely to be of use in substantiating the charge of stealing the goods that were specified, it was held that the constable was a trespasser. (*Crozier* v. *Cundey*, 9 *D. & R.* 224; 6 *B. & C.* 232, *S. C.*)

Where officers went with a search-warrant, and, at the desire of the party, gave it to him for his perusal, and he would not return it, it was held that they had a right to take it from him, and even to coerce his person to obtain the possession of it, provided they used no more violence than was necessary. (*R.* v. *Mitton*, 3 *C. & P.* 31.)

Return of the warrant.

On the *return* of the warrant executed, the justice hath these things to do.

As touching the *goods* brought before him, if it appear they were not stolen, they are to be restored to the possessor; if it appear they were stolen, they are not to be delivered to the proprietor, but deposited in the hands of the sheriff or constable, to the end the party robbed may proceed by indicting and convicting the offender, to have restitution. (2 *Hale*, 151.)

As touching the *party* that had the custody of the goods, if they were not stolen, then he is to be discharged; if stolen, but not by him but by another, that sold or delivered them to him, if it appear that he was ignorant that they were stolen, he may be discharged as an offender, and bound over to give evidence as a witness against him that sold them; if it appear he was knowing they were stolen, he must be committed or bound over to answer the felony. (2 *Hale*, 152.)

Form of a search-warrant.

County of } *To the Constable of*

Whereas it appears to me, J. P., esq., one of her majesty's justices of the peace in and for the said county, by the information on oath of A. I., of , in the county aforesaid [yeoman], that [or, that he hath probable cause to suspect and doth suspect that] the following goods, to wit, , have, within days last past, by some person or persons unknown, been feloniously taken, stolen, and carried away, out of the house of the said A. I., at aforesaid, in the county aforesaid; and that the said A. I. hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the [dwelling-house] of A. O., of , in the said county, [yeoman]: These are therefore, in the name of our said lady the Queen, to authorize and require you, with necessary and proper assistants, to enter in the day-time into the said [dwelling-house] of the said A. O., at aforesaid, in the county aforesaid, and there diligently to search for the said goods, and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said A. O., before me, or some other of the justices of our said lady the Queen, assigned to keep the peace in the county aforesaid, to be disposed of and dealt with al according to law Given under my hand and seal at , in the said county, the day of , in the year of the reign of J. P.

Securities. *Stealing of.* See "*Larceny*," Vol. III.

Seditious Meetings, &c. See "*Riot*," *ante*; "*Libel*," Vol. III

Seduction See "*Abduction*," Vol. I.;—*Conspiracy to seduce*, see "*Conspiracy*," Vol. I.;—*As to Solicitation of Chastity*, see "*Lewdness*," Vol. III.

Self-Defence. See "*Assault*," Vol. I. p. 283; "*Homicide*," Vol. III. p. 796.

Self-Murder. See "*Homicide*," Vol. III.

Servants.

As to apprentices, *see* "*Apprentice*," Vol. I.

As to the employment of labourers in agricultural districts, &c., *see* "*Poor*," Vol. IV.

As to the employment of children in factories, *see* "*Factories*," Vol. III.

As to the employment of females and children in mines, *see* "*Mines*," Vol. V.

As to the settlement of servants, *see* "*Poor*," Vol. IV

As to seamen, *see ante*, "*Seamen.*"
As to larceny, and embezzlements by, *see* "*Larceny,*" Vol. III.
As to servants firing houses, *see* "*Fire,*" Vol. III. p. 39.

Herein of—

I. *Domestic Servants, Clerks, &c.* p. 844.
1. Contract of Service, and Duration of, 845.
2. Dissolution of, Dismissal of, for Misconduct, &c., 847.
3. Wages of, &c., 851.
4. Liability of Master for Acts of, 853.
5. Right of Master to correct; Liability for Injuries to, 857.
6. Right of, to defend, and *vice versâ*, 858.
7. Right of, to his Services; enticing away Servants, &c., 859.
8. Characters of, 860.

II. *Husbandmen, Labourers, Artificers, Calico Printers, Colliers, Glassmen, Handicraftsmen, Keelmen, Manufacturers, Miners, Pitmen, Potters, Tinners, &c.*, 864.
1. Contract of Service for: who compellable to serve in Husbandry, and how; and herein of the Statute of Labourers, 5 Eliz. c. 4, p. 864.
2. Colliers or Miners working contrary to Contracts, fraudulently stacking Coal, &c., 871.
3. Complaints before Justices by Servants against Masters, 872.
4. Complaints before Justices by Masters against Servants, 879.

III. *Workmen in the Cotton, Flax, Fustian, Hosiery, Linen, Mohair, Silk, Woollen, and Worsted Manufactures*, 883.

IV. *Workmen in the Felt, Fur, Hat, Hemp, or Iron Manufactures*, 893.

V. *Workmen in the Manufactures of Clocks and Watches*, 903.

VI. *Workmen in the Bone and Thread Lace Manufactures*, 906.

VII. *Shoemakers within the Bills of Mortality*, 907.

VIII. *Tailors within the Bills of Mortality*, 907.

IX. *Wages of certain Artificers, Labourers, and Manufacturers to be paid in Coin*, 908.

X *Arbitrations between Masters and Servants*, 914.

XI. *Combinations amongst*, 922.

XII. *Forms*, 927.

I. Domestic Servants, Clerks, &c.

Justices have no peculiar jurisdiction over domestic servants.

It may be as well to premise that magistrates have not any peculiar jurisdiction over *domestic* or *menial* servants, clerks, &c.; such jurisdiction is confined to servants in husbandry, manufacturers, journeymen, artificers, and labourers, and other such class of servants. (*Kitchen* v. *Shaw*, 6 *Ad. & Ell.* 729; 1 *N. & P.* 791, *S. C., and cases there cited, and see post*, 877.) It is thought, however, worth while to notice some of the laws respecting these descriptions of servants. We shall therefore proceed to consider them in the order above proposed.

1. *Domestic Servants, Clerks, &c.*

1. The Contract of Service, and Duration of.

In writing.

The contract of service need not be in writing, unless the retainer is by the terms of the bargain to extend beyond a year, in which case a written agreement is necessary, in order to take the case out of the 29 Car. II. c. 3, s. 4. (*Bracegirdle* v. *Heald*, 1 *B. & Ald.* 722.) And it seems that a hiring for a certain year to commence at a future day, must be reduced into writing. (*See Snelling* v. *Lord Huntingfield*, 1 *C. M. & R.* 20; *Beeston* v. *Collyer*, 4 *Bingh.* 309; 12 *Moore*, 652, *S. C.*) This, however, would not be requisite in the case of a hiring of a domestic servant, who is not in general hired for a year *certain*.

The contract may be proved by parol, although the terms of it are, by the direction of the parties, written down by a third person; such writing, though read over to the parties, not being signed by them. (*Rex* v. *Wrangle*, 4 *Nev. & M.* 375; 2 *Adol. & Ellis*, 314; 1 *Har. & Woll.* 41 *S. C.*

Consideration for.

If the agreement must be in writing, it seems that a consideration and sufficient mutuality must appear on the face of it. (*Lees* v. *Whitcomb*, 5 *Bingh.* 34; 2 *M. & P.* 86, *S. C.*)

B., by a memorandum of agreement signed by himself only, agreed to work for the plaintiff, "manufacturer of powder flasks, and for no other person whatsoever, from the 17th Aug. 1833, during and until the expiration of twelve months, and so on from twelve months' end to twelve months, and until I shall give J. S. (plaintiff) twelve months' notice in writing to quit:"—Held, that, as this agreement contained nothing binding on the plaintiff, it was *nudum pactum*; and therefore, although B. served under the agreement till April, 1836, when he left the service and worked for the defendant, who was shown the agreement in question, and warned that B. was the plaintiff's hired servant, that in an action against defendant for harbouring the plaintiff's servant, it was competent to the defendant to show that the contract of hiring was altogether void. (*Sykes* v. *Dixon*, 1 *Per. & D.* 463.)

Stamp duty.

By the 55 Geo. III. c. 184, a memorandum or agreement for the hire of any *labourer, artificer, manufacturer, or menial servant*, is exempt from stamp duty. (*See R.* v. *St. Paul's, Bedford*, 6 *T. R.* 452.)

Term of service.

If a person retain a servant generally, (except in the case of a domestic or menial servant,) without expressing any time, it will, in the absence of evidence to the contrary, be considered as a retainer for one year; (2 *Inst.* 42; *Burr. S. C.* 299, 513; *see Spain* v. *Arnott*, 2 *Stark.* 257; *Huttman* v. *Bullnois*, 2 *C. & P.* 511;) and this it seems is applicable to servants in husbandry (*Id.*); and to clerks, warehousemen, and servants in general; (*Beeston* v. *Collyer*, 4 *Bing.* 309; 12 *Moore*, 552; 2 *C. & P.* 607, *S. C.*; *Fawcett* v. *Cash*, 3 *Nev. & M.* 177; 5 *B. & Adol.* 904, *S. C.*; *Turner* v. *Robinson*, *Id.* 789; 2 *Nev. & M.* 829, *S. C.*; *Huttman* v. *Bullnois*, 2 *C. & P.* 510; *Atkin* v. *Acton*, 4 *C. & P.* 208). A newspaper reporter, (*Williams* v. *Byrne*, 7 *Ad. & Ell.* 177,) or an editor of a newspaper, (*Baxter* v. *Nurse*, 13 *Law J., N. S.*, 82, *C. P.*) might come within this rule. If at the expiration of the year the servant continue in the service, a contract for a second year is implied, and so on. (*See Id.*; *Smith, Merc. Law*, 386.)

This rule, however, that a general hiring is a hiring for a year, is not a rule of law, but it is a question for a jury depending on the facts of such particular case, whether or not the hiring was for a less or greater period; (*see per Tindal, C. J., in Baxter* v. *Nurse, supra*; *R.* v. *Christ. Parish*, 3 *B. & Cres.* 459; *R.* v. *Great Bowen*, 7 *B. & Cres.* 249.) The custom of any particular trade or business may be called in aid to solve the question, unless by so doing any rule of evidence would be infringed.

By the general understanding on the subject, and without an express agreement or understanding to the contrary, *domestic* or *menial* servants, though hired by the year, are subject to be dismissed or to depart at any time on a month's notice, given by either, or a month's pay by the master. (*See Fawcett* v. *Cash*, 3 *Nev. & M.* 177; 5 *B. & Ad.* 904, *per Littledale, J.*;

1. *Domestic Servants, Clerks, &c.*

Robinson v. *Hindman*, 3 *Esp.* 235; *Cutter* v. *Powell*, 6 *T. R.* 326; *Nowlan* v. *Ablett*, 5 *Tyrw.* 709; 1 *Gale*, 72; 2 *C. M. & Ros.* 54, *S. C.*) But this does not apply to other descriptions of servants. (*Brougham* v. *Wagstaffe*, 5 *Jurist*, 845.)

"Menials, or menial servants (a derivative from *mœnia*, signifying the walls of a house, or other place), are household servants, such as live within the walls of their master's house, mentioned in the stat. 2 Hen. IV. 2, 21."—(*Cowell's Law Dict.*) By the stat. 2 Hen. IV. c. 7, the giving of liveries is prohibited, "save that the king shall give only his honourable livery to his lords temporal who shall please him, and also to his knights, and esquires *menial*, and which be of his retinue, and do take of him their yearly fee for term of life;" and by c. 21, it is enacted, that the "prince may give his honourable livery (a swan) to his *menial gentlemen*." (1 *Gale*, 72, *n.*; *and see Johnson* v. *Blenkensopp*, 5 *Jurist*, 870.) In *Nowlan* v. *Ablett*, *supra*, a head gardener was engaged on an agreement that he should have yearly wages and a house to live in rent free. Several inferior gardeners were subject to his directions, and the house he lived in was not under the roof or a part of the master's dwelling-house. The jury having found that he was a menial servant, it was held the verdict was right, and that he was consequently liable to be discharged on a month's notice. So where by a written memorandum of agreement between the defendant and the plaintiff, the plaintiff was "to have 6*s.* a week, three bolls of wheat, to set potatoes for his family's use, to have a cow kept, house and firing, to keep the gardens and pleasure grounds in clean and good order, to assist in the stables, and when required, at hay and corn harvest, and to make himself generally useful. To enter 12th May, 1838." The defendant had dismissed the plaintiff upon a month's warning. In an action brought by the plaintiff to recover a quarter's wages, as being a yearly servant:—Held, that he was a menial servant, and was therefore, by the general rule of law, entitled to a month's notice only; and that the memorandum of agreement contained nothing which showed an intention in the parties to exclude that rule. (*John* v. *Blenkensopp*, 5 *Jur.* 870.)

The fact of the servant having previously served for a shorter period than a year, (*R.* v. *Whatton*, 5 *T. R.* 447; *R.* v. *Hales*, 5 *Id.* 668; *R.* v. *Wonford*, *Id.* 506,) will not be evidence of the service in question having been for less than a year.

Nor will the fact of master and servant having *thought* that the contract might be put an end to within the year. (*Rex* v. *Stockbridge*, *Burr.* 759.)

Nor the mere fact of the wages being reserved, payable at short intervals during the year. (*R.* v. *Seaton*, *Cald.* 440. When a hiring at so much per month is a hiring for a year, *see Fawcett* v. *Cash*, 3 *Nev. & M.* 177; 5 *B. & Adol.* 904, *S. C.*) So where the contract was to serve for 4*s.* 9*d.* a week, or at the rate of 4*s.* a week, the parties having liberty of parting at a month's notice from either; this was held to be a hiring for a year; for the mention of a month showed that the stipulation for a weekly payment of wages was not intended to limit the duration of the contract. (*R.* v. *Hampreston*, 5 *T. R.* 205; *and see R.* v. *Great Yarmouth*, 5 *M. & Selw.* 114; *R.* v. *Birdbrooke*, 4 *T. R.* 245; *R.* v. *Sandhurst*, 7 *B. & Cres.* 537; *R.* v. *Pershore*, 8 *Id.* 679.) Proof that the servant was to have wages "*at the rate of*" 80*l.* per annum, has been held sufficient presumptive proof of the hiring being for a year. (*Turner* v. *Robinson*, 2 *Nev. & M.* 829; 5 *B. & Ad.* 789, *S. C.*)

On the other hand, a general hiring at *weekly wages*, has been considered but as a weekly hiring, if there be no other circumstance whence the intended duration of the contract can be collected. (*Per Buller, J., in* 2 *T. R.* 433; *R.* v. *Bucklechurch*, 5 *East*, 302; *R.* v. *Dodderhill*, 3 *M. & Selw.* 243.) So a hiring at so much per week "for so long a time as the master and servant shall agree," is a weekly hiring. (*R.* v. *Elstack*, *Cald.* 489.) So a hiring at 6*s.* per week for the winter, and 9*s.* per week for the summer, is not a *yearly* hiring. (*R.* v. *Inhabitants of Warminster*, 6 *B. & C.* 77;

9 *D. & R.* 70, *S. C.*) And as to quarterly payments being evidence of a quarterly hiring, *see Collins* v. *Price*, 5 *Bing.* 132; 2 *Moo. & P.* 233, *S. C.*

1. *Domestic Servants, Clerks, &c.*

Nor can an indefinite hiring by piece-work, or a hiring to do a certain quantity of work, be considered a yearly hiring. (*R.* v. *St. Peter's, Burr. S. C.* 513; *R.* v. *Woodhurst*, 1 *B. & A.* 325.)

Whether or not a contract by a party to remain in the service of his employer *during the life* of the former, is valid, may admit of some doubt. It would seem that such a contract is not illegal, although but slight damages would probably be given for violating so improvident a bargain. (*See* 1 *Bla. Com.* 424, *n.* 3, *by Christian; Chit. on Cont.* 458.) At all events such a contract would have to be in writing, and signed by the party, to make it binding on him.

---

2. Dissolution of Service, and Dismissal of Servant.

Dissolution of contract, and dismissal of servant.

By mutual consent the contract of service may, of course, be put an end to at any time. As to the wages in such a case, *see post*, 852.

A contract, by which a servant hires himself to a master as a footman and groom, is not dissolved by a subsequent contract by which he engages to bind himself to serve in a different character at higher wages and in a foreign country, although the servant accompanies his master into such foreign country; the service performed abroad being the same as that originally contracted for. (*Rex* v. *Buckingham*, 3 *Nev. & M.* 72.)

By death.

By the death of the master the contract is dissolved. (1 *Will. Exors.* 579; see as to the case of an apprentice, *ante*, Vol. I. p. 199.)

Bankruptcy.

The bankruptcy of the parties does not operate as a dissolution of the contract of service, and the certificate of the master under it discharges only from wages provable under the commission. (*See Thomas* v. *Williams*, 1 *Ad. & Ell.* 685. See the 5 & 6 Vict. c. 122, ss. 28, 29, as to the payment of clerks' and servants' wages in case of bankruptcy; and *Exp. Gough*, 1 *Mon. & B.* 417. *Exp. Humphreys, Id.* 413; *Exp. Skinner, Id.* 417, and cases there cited.)

Misconduct.

The servant may be dismissed before the end of his term of service, if he has been guilty of misconduct; for it is an implied agreement on his part, that if he be guilty of any moral misconduct, either pecuniary or otherwise, wilful disobedience or habitual neglect, the master shall be at liberty to dismiss him. (*Per Parke, in Callo* v. *Brouncker*, 4 *C. & P.* 519.) It is not, however, for every trifling act of misconduct that the servant can be thus dismissed. As to what shall amount to sufficient misconduct for this purpose, must depend on the particular circumstances of each case. (*Per Cur. in R.* v. *St. John, Devizes*, 4 *M. & Ry.* 681; 9 *B. & Cres.* 900, *S. C.*)

Embezzlement, &c.

A servant's embezzling his master's property, is a good ground for dismissal. (*Brown* v. *Croft, Chit. Gen. Prac.* 81.) So would any other offence committed by the servant.

The servant impliedly contracts in all cases to obey the lawful and reasonable orders of his master, within the scope of the services contracted for. (*Per Cur. in R.* v. *St. John, Devizes*, 4 *M. & Ry.* 681; 9 *B. & Cres.* 900, *S. C.*)

Disobeying orders.

In *Spain* v. *Arnott*, Ld. *Ellenborough*, C. J., at *N. P.*, held, that if a servant hired for a year *refuse to obey his master's orders*, the master is justified in dismissing him before the end of the year, and the servant cannot recover any wages. (*Spain* v. *Arnott*, 2 *Stark. N. P.* 256.) This was an action brought by the plaintiff to recover wages for his service from Michaelmas to July. The plaintiff was a yearly servant to the defendant, who was a farmer. The plaintiff usually breakfasted at five o'clock in the morning, and dined at two. One day the master ordered the servant to go with the horses to the marsh, which was a mile off, before dinner, dinner being then ready. The plaintiff said, that he had done his due, and would not go till he had had his dinner: the defendant

1. *Domestic Servants, Clerks, &c.*

told him to go about his business, and the plaintiff went accordingly, without offering any submission, or to obey his master's orders. On the part of the defendant, it was contended, that the action was not maintainable, since the contract was a year's service in husbandry, which had not been performed. *Scarlett*, for the plaintiff, contended that, if the master had had any reason to complain of the conduct of the servant, he ought to have complained to a magistrate for relief. That the master could not, by turning the servant away before the completion of the year, dissolve the contract, and bereave him of his wages; it would be exceedingly hard if he could, for then he might put an end to the contract on the very last day. Ld. *Ellenborough*, C. J.: "If the contract be for a year's service, the year must be completed before the servant is entitled to be paid. If the plaintiff persisted in refusing to obey his master's orders, I think he was warranted in turning him away. He might have obtained relief by applying to a magistrate; but he was not bound to pursue that course, the relation between master and servant, and the laws by which that relation is regulated, existed long before that statute. There is no contract between the parties, excepting that which the law makes for them; and it may be hard upon the servant, but it would be exceedingly inconvenient if the servant were to be permitted to set himself up to control his master in his domestic regulations, such as the time of dinner. After a refusal on the part of the servant to perform his work, the master is not bound to keep him on, as a burdensome and useless servant, to the end of the year. In the present instance, it might be very convenient for the master to change the hour of dinner: the question really comes to this—whether the master or the servant is to have the superior authority?"—A juror was afterwards withdrawn by consent.

To an action against the defendants, proprietors of a cotton manufactory, for refusing to employ plaintiff as manager, pursuant to agreement, and discharging him from their service before the period mentioned in the agreement, the defendants pleaded, that the plaintiff so wrongfully, disobediently, and unskilfully conducted himself as such manager, that they, the defendants, suffered and sustained great loss, to wit, to the amount of 1000*l.*:—Held, that in order to support such a plea, it was necessary to show not only disobedience, but such disobedience as occasioned a loss; and, there being no evidence of any loss, that the plea was not supported. (*Cussons* v. *Skinner*, 11 *Mee. & W.* 161; 12 *Law J., N. S.*, 347, *S. C.*)

Absence.

Being absent when wanted, sleeping from home at night repeatedly without his master's leave, &c., is a sufficient cause for dismissal. (*Robinson* v. *Hindman*, 3 *Esp.* 235; *and see Crawford* v. *Reid*, 1 *Show. P. C.* 124.) So is any unwarrantable absence from his duty, even though involuntary, as if he subject himself to imprisonment. (*R* v. *Burton*, 2 *M. & Selw.* 329.) But not so where the absence is merely temporary, and for no immoral purpose, and there be no serious impediment to the master's business; (*Fillieul* v. *Armstrong*, 7 *Ad. & Ell.* 557; 2 *N. & P.* 406, *S. C.*;) nor where it is warrantable, as where it is for the purpose of having a severe hurt remedied; (*R.* v. *Sharrington*, 2 *Bott, P. L.* 525; *R.* v. *Wintersett* (*Inhabitants of*), *Cald.* 298; *Chandler* v. *Greiwes*, 2 *H. Bla.* 606;) or going to a statute to be hired for the ensuing year; (*R.* v. *Islip*, 1 *Stra.* 423; *R.* v. *Polesworth*, 2 *B. & A.* 483;) or looking for another service; (*R.* v. *Potter Heigham*, *Burr. S. C.* 690).

Where a workman is hired for a year to work at a particular trade under a written agreement, which says nothing as to any periods of absence allowed to the workman, parol evidence may be given that it is the custom of the particular trade for the workmen employed in it to take certain holidays, and to absent themselves on such occasions from their work without the permission of their masters. (*Reg.* v. *Stoke-upon-Trent* (*Inhabitants of*), 13 *Law Journal Rep., N. S., M. C.* 41.)

Betraying secrets.

A servant betraying the secrets of his master would be guilty of misconduct, for which he might be discharged. (*See per Best, C. J., in Beeston* v. *Collyer*, 2 *C. & P.* 609.)

1. *Domestic Servants, Clerks, &c.*

If a person, hired on an annual service as clerk to conduct an establishment for his master, set up a claim to be a partner, although in a respectful manner and *bonâ fide*, it is sufficient cause for the master to dismiss him without notice. (*Amor* v. *Fearon*, 1 *Per. & D.* 398; 9 *A. & Ell.* 550, *S. C.*)

Claiming to be a partner.

Disrespect.

Where a clerk employed to make entries in the minute book of a company entered a protest against a summons for the appointment of a successor to himself:—It was held, that a jury were justified in finding this to be sufficient ground for his dismissal. (*Ridgway* v. *Hungerford Market Company*, 3 *Ad. & Ell.* 171; 4 *N. & M.* 797, *S. C.*) So where to an action for breach of an agreement to continue to employ plaintiff as an accountant, defendants pleaded, in one plea, that plaintiff received money for which he did not account; that he made improper payments with defendants' money; that he made false entries and representations; and refused to obey his employers' commands; wherefore they discharged him:—It was held, that the defendants were entitled to a verdict on the plea, though they proved only that plaintiff had made a false entry and representation, and though the reason assigned for his discharge was disrespect towards his employers. (*Baillee* v. *Kell*, 4 *Bing. N. C.* 638, 650; 6 *Scott*, 379, *S. C.*)

Sulkiness.

But where a courier or valet drove the plaintiff's family to an hotel where he had been desired not to stop, and had been occasionally sulky and negligent and once insolent in his manner, it was considered by *Parke*, J., that this was not a *sufficient* ground for dismissing him. *Callo* v. *Brouncker*, 4 *C. & P.* 518, *sed quære.*)

Immorality.

Assaulting female servant.

Moral turpitude on the part of the servant will be a good ground for his dismissal: as if he assault his master's maid servant, with intent to take liberties with her against her consent. (*Atkin* v. *Acton*, 4 *C. & P.* 208.)

Being with child.

In *R.* v. *Brampton*, *Cald.* 11, the principal question was, whether a maid servant hired for a year could be discharged by her master three weeks before the end of the year, (*she being with child*,) by his own authority, without the intervention of a magistrate, so as to prevent her gaining a settlement. By Ld. *Mansfield*, C. J.: "The question is, has the master done right or wrong in discharging his servant for this cause? I think he did not do wrong. Shall the master be bound to keep her in his house? To do so would be *contra bonos mores*; and, in a family where there are young persons, both scandalous and dangerous." *Willes*, J., said, that "This case differs from those of *R.* v. *Richmond*, *Burr. S. C.* 740, and *R.* v. *Islip*, 1 *St.* 423, (*see* "*Poor*," *Settlement by Service*, Vol. IV.,) where the cause of the discharge of the servant by the master was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant, though I think he could not avail himself of the authority of a magistrate, the jurisdiction of justices being confined to cases in husbandry" (*a*).

(*a*) Upon which case Mr. *Caldecott* observes, that all that seems established by this case is, that a master may, without the intervention of a magistrate, dismiss his servant for moral turpitude, even though it be not such for which the servant may be prosecuted at common law. Whether he may or not for any other species of misconduct or general misbehaviour, though there are authorities to show that he cannot, seems, from this case, not to be fully and absolutely settled. By the general practice throughout the kingdom, and particularly in large towns, this power, however warranted, is exercised by masters; certainly, this question has not of late years been brought before the court for argument, except in the case of *Burrow* v. *Sayer*, *T. T.* 27 Geo. II. But at the sittings at *Westminster*, 1773, it arose before Ld. *Mansfield*. A wet-nurse retained for the year, was, discharged by her mistress, who tendered her her wages in proportion to the time she had served: this was refused, and the action brought for the whole year. It was proved, on behalf of the defendant, that the plaintiff had been frequently insolent to her mistress, the defendant's wife; and was subject to violent fits of passion, in which she

1. *Domestic Servants, Clerks, &c.*

Where the master discharged a yearly servant on account of a *supposed* criminal intimacy with a servant girl, who had previously left the service big with child, the court of King's Bench seemed clear, that if the criminality had really existed, the case would have come within the principle of the above case of *R.* v. *Brampton.* (*R.* v. *Welford, Cald.* 57.)

Alleged criminality.

Previous immorality.

But in *R.* v. *Westmeon, Cald.* 129, it was said by Ld. *Mansfield,* C. J., that the servant being the father of a bastard child, prior to the master's hiring him, and the crime not committed when in his own house, the master shall not discharge him under this pretence; it is not a debauching of his servant, or turning his house as it were into a brothel.

When a magistrate discharges a labouring or other such servant from the service of his master, it must appear on the face of the order itself to be a case within the jurisdiction of the magistrate. (*R.* v. *Hulcott,* 6 *T. R.* 583.)

Servants marrying.

A servant's marrying is no reasonable cause for discharge. (*Com. Dig. tit. "Justices of Peace,"* (*B.* 63).) If a woman who is a servant shall marry, yet she must serve out her time, and her husband cannot take her out of her master's service. (*Dalt. c.* 58; *Wood's Inst. b.* 1, *c.* 6.) If a married man and his wife do bind themselves to serve, they shall be compelled to serve according to their covenant or agreement. (*Dalt. c.* 58.)

Sickness, &c.

If a servant retained for a year happen within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not, therefore, put such servant away, nor abate any part of his wages for such time. (*Dalt. c.* 58, *p.* 141; *see further, Chandler* v. *Grieves,* 2 *H. Bla.* 606; *R.* v. *Winter, Dalt. Cald.* 298: *per Le Blanc, J., R.* v. *Sudbrooke,* 1 *Smith's Rep.* 59. As to the liability of the master to pay the doctor's bill, *see post,* 852.)

Insanity.

It does not appear to be settled whether the insanity of a servant be a good cause for discharging him. In *R.* v. *Sutton,* (5 *T. R.* 659,) Ld. *Kenyon,* C. J., appeared to be of opinion that insanity was not a legal cause for discharging a servant; but this opinion being cited and relied upon in a subsequent case (*R.* v. *Inh. of Hulcott,* 6 *T. R.* 587), his lordship said, "I am not prepared to go that length; in that case there had been no application to a magistrate to discharge, and I think that the master could not of his own authority discharge the servant for that cause."

Other improper conduct.

If a master carpenter sends his men from London to work at a gentleman's house in the country, he may dismiss them for improper conduct, although it does not amount to either moral misconduct, wilful disobedience, or habitual neglect; and when, in such a case, a journeyman was found in one of the preserves of the gentleman at whose house the work was done, after a caution had been given him to keep the paths, and upon complaint by the gentleman, the master dismissed the journeyman, the judge left it to the jury to say, whether the master was not justified in such dismissal. (*Read* v. *Dunsmore,* 9 *Car. & P.* 588.)

Master may show other grounds for dismissal than those expressed.

A master who has discharged his servant, though for an insufficient cause, is not precluded from afterwards justifying that dismissal by alleging any sufficient cause that may have been then in existence. (*Baillie* v. *Kell,* 4 *Bingh. N. C.* 650; 6 *Scott,* 379, *S. C.*; *Ridgway* v. *Hungerford Market Company,* 3 *Ad. & Ell.* 171; 4 *N. & M.* 797, *S. C.*) But it seems that it is otherwise where the act of misconduct was not known to the

---

had several times frightened, and once awakened her mistress while sleeping, before her recovery. It was also proved, that these fits of passion must be injurious to her milk; and it was insisted, that all these circumstances amounted to reasonable cause, and even created a necessity, of discharging the plaintiff. But, *per* Ld. *Mansfield,* "No person can be judge in his own cause; and this first principle could never be meant to be overturned by any law or usage whatsoever;" and though it was stated as the general usage or practice in London, Westminster, and the environs, to dismiss servants with a month's wages, it was disregarded by the court, and the servant had a verdict for the whole year. (*Temple* v. *Prescott.*)

master at the time of the discharge, as it could not then be the cause of it. (*Cussons* v. *Skinner*, 11 *M. & Wels.* 161; 12 *L. J., N. S.*, 347, *S. C.*)

1. *Domestic Servants, Clerks, &c.*

Expelling servant the premises.

The master after the dismissal may expel the servant his house and premises, and treat him like any other trespasser, if after request he refuse to depart. If the servant has occupied as such and not as a tenant distinct premises, he may be still ejected from them the same as if the premises were the actual residence of the master: and it has been held, that a gamekeeper guilty of disobedience, may be discharged as any other servant may, and his residence in a house by permission of the lord of a manor is lawful only whilst he is game-keeper. (*Litt. Rep.* 139; *Bertie* v. *Beaumont*, 16 *East*, 33; *and see R.* v. *Stoel*, 2 *Taunt.* 342; *Hunt* v. *Colson*, 3 *M. & Scott*, 790.) But of course this cannot be done if the relation of landlord and tenant subsisted between the parties. And a servant occupying a house cannot in general be said to hold it as servant, if it be not the master's house. (*Reg.* v. *Wall Lynn*, 8 *Ad. & E.* 379; 3 *N. & P.* 411, *S. C.*) It may be observed that one of two partners, joint-tenants of a house where their joint business is carried on, has a right to authorize a servant to remain in the house, though the other partner has regularly put an end to the service. (*Donaldson* v. *Williams*, 1 *C. & M.* 345.)

---

3. Wages of, &c.

When entitled to in general.

The amount of wages of domestic servants, clerks, and others, is regulated by the contract entered into by them. "It is clearly agreed that if a person retain a servant and agree to pay him so much by the day, month, or year, that the servant may have an action against the master on the contract, or against his executors, and that every such retainer will be presumed to be in consideration of wages, unless the contrary appear." (*Bac. Ab. Master and Servant* (*n.*); *Pinchon's case*, 9 *Co.* 88, *a. b.*; *Sands* v. *Leake*, 2 *Roll. Rep.* 269.)

But if there be no express or implied agreement for wages, as if the servant merely came on trial, or the like, he can claim none. And in *Alfred* v. *Fitzjames*, (3 *Esp.* 3,) it was held that a servant who comes over from the West Indies, where he had been a slave, and who continues in the service of his master in England, is not entitled to wages without an express agreement. (*And see Wilkins* v. *Wells*, 2 *C. & P.* 231; *Osborn* v. *Governors of Guy's Hospital*, *Stra.* 728; *Le Sage* v. *Coussmaker*, 1 *Esp. R.* 188.) So, if A. agrees to serve B. as an apothecary's assistant at such salary as C. should think reasonable, and it appear that no application had been made to C. to fix any salary, A. cannot recover any thing for his services in an action for work and labour. (*Owen* v. *Bowen*, 4 *C. & P. C. N. P.* 93; *and see Taylor* v. *Brewer*, 1 *M. & Sel.* 290; *Jewry* v. *Busk*, 5 *Taunt.* 302; *Osborn* v. *Governors of Guy's Hospital*, *Stra.* 728; *Le Sage* v. *Coussmaker*, 1 *Esp.* 188.) A party entered into the service of another under the following contract:—"I hereby agree to enter into your service as a weekly manager, to commence from next Monday. The amount of payment I am to receive I leave entirely to you."—It was held, *per Alderson* and *Maule*, BB., *dissentiente Parke*, B., that he was entitled to recover a reasonable remuneration for the services performed by him. (*Bryant* v. *Flight*, 5 *Mee. & W.* 114.)

An agreement, by which a master promised his servant in addition to his ordinary wages, a present of 20*l.*, the services to be at all events till the end of one year, was renewed in all its parts from year to year, by the servant; having continued several years, and nothing being said to the contrary by either party:—It was held, that the 20*l.* was due for every year of the service. (*Mansfield* (*Earl*) v. *Scott*, 1 *Clark & Fin.* 319.)

The plaintiff hired himself to the defendants to work in a colliery, under a written agreement, which stipulated, that when the pit of the colliery should be off work, the plaintiff should continue the servant of the defendants, and subject to their orders and directions, and liable to be employed by them as they should think fit, and should do and perform a full day's

1. *Domestic Servants, Clerks, &c.*

work on every working day :—Held, that under such an agreement, the defendants were not bound to employ the plaintiff on all reasonable working days. (*Williamson* v. *Taylor and others*, 13 *Law Journal, Q. B.* 81.)

On quitting service or dismissal.

A *domestic* servant, hired in the general way, is entitled to his wages up to the time he serves, though he do not continue in the service, either from misconduct or otherwise, during the whole year: for such is the general understanding on the subject. (*See Cutler* v. *Powell*, 6 *T. R.* 326, *admitted by Lord Kenyon in Robinson* v. *Hindman*, 3 *Esp.* 235; 2 *Selw. N. P.* 1032.) And if dismissed without cause, and without a month's previous notice of dismissal, he is entitled to a month's wages, in addition to the wages due up to the end of the service.

But this does not apply to clerks, warehousemen, and other servants, who must in general serve, or be ready and offer to serve, during the whole time of their engagement, whether by the year or otherwise; and if they do not, and quit their master's service causelessly, or if they be justifiably dismissed for misconduct, they are not, in general, entitled to wages not accrued due during the time of service or afterwards; for an entire contract cannot be apportioned. (*Turner* v. *Robinson*, 6 *C. & P.* 15; 5 *B. & Ad.* 789, *S. C.*; *Huttman* v. *Bullnois*, 2 *C. & P.* 510; *Atkin* v. *Acton*, 4 *C. & P.* 208; *R.* v. *Whittlebury*, 6 *T. R.* 467; *and see the more recent cases of Lamburn* v. *Cruden*, 2 *M. & Gr.* 252; 2 *Scott, N. R.* 533, *S. C.*; *Ridgway* v. *Hungerford Market Company*, 3 *Ad. & Ell.* 171.)

If the clerk or servant, hired generally, and not a mere domestic servant, be improperly dismissed before the end of the year or other time of his hiring, he may, on showing his readiness to complete the service, recover damages to the amount of wages for the full time of his hiring. (*See Archer* v. *Horner*, 3 *C. & P.* 349; *Gondell* v. *Pontigny*, 4 *Camp.* 375; 1 *Stark.* 198, *S. C.*; *Eardley* v. *Price*, 2 *N. R.* 333; *Collins* v. *Price*, 2 *M. & P.* 233; 5 *Bingh.* 132, *S. C.* *See*, as to the form of declaring, *Smith* v. *Hayward*, 2 *N. & P.* 432; 7 *Ad. & Ell.* 544, *S. C.*; *Broxham* v. *Wagstaffe*, 5 *Jurist*, 845; *Hartley* v. *Harman*, 3 *Per. & D.* 567.)

Where service ends by consent in middle of quarter.

Where a contract for a service at a yearly salary is by mutual consent put an end to in the middle of a quarter, nothing being said about remuneration for the time elapsed since the termination of the last year's service, the law implies no engagement to pay for the services performed since the last quarter (*a*). (*Lamburn* v. *Cruden*, 2 *Man. & G.* 253; 2 *Scott, N. R.* 533, *S. C.*) But it should be left to the jury to say whether the parties had come to an agreement that those services should be paid for (*Ib.*; *see Thomas* v. *Withams*, 1 *Ad. & Ell.* 685; 3 *N. & M.* 345, *S. C.*) A party working under a yearly contract at wages payable quarterly, having been discharged for misconduct after the commencement of the quarter, agreed to finish his month's work :—It was held, that, although he could not recover a quarter's wages, still he was entitled to a month's wages. (*Hurcum* v. *Stericker*, 10 *Mee. & W.* 553; 12 *Law J., N. S.*, 17, *S. C.*)

Wages in sickness.

A servant incapacitated from actual service during part of the time of his living, by sickness, is still entitled to wages during that period. (*Ante*, 850.)

Master not bound to provide medicines, &c.

But a master is not bound to provide a domestic or other servant with medical attendance and medicines during sickness; but if a servant fall sick, and the master call in his own medical man to attend such servant, or otherwise render himself liable, the master will be liable, and cannot deduct the charges for such medical attendance out of the servant's wages, unless there be a special contract between the master and servant to that effect. (*Sellon* v. *Norman*, 4 *C. & P.* 80; *and see Cooper* v. *Phillips*, *Id.* 581; *Newby* v. *Wiltshire*, 2 *Esp.* 739; *Wennall* v. *Adney*, 3 *B. & P.* 247; *Watling* v. *Walters*, 1 *C. & P.* 132; *Reg.* v. *Smith*, 8

(*a*) In *Dalt. c.* 58, *p.* 141, *Com. Dig. Justices*, (*B.* 63), it is said, that if a servant (*id est*, a labourer, &c.) of his own accord shall depart from his master before his time expire, he shall lose all his wages. But if he depart with the consent of his master, he shall have his wages for the time he served.

C. & P. 153.) In the case however of sickness of an apprentice, the master is bound to provide medical attendance and medicines. (*Reg.* v. *Smith.*)

1. *Domestic Servants, Clerks, &c.*

Against the claim for wages, the master cannot, without an express agreement to that effect, set off the value of goods lost or broken by the servant's carelessness, however gross. (*See Le Loir* v. *Bristow*, 4 *Camp.* 134.) The master's remedy, in such case, would be by cross action.

Deduction for breakages.

It has been considered that the wages of domestic servants and labourers are entitled to preference in the payment of other simple contract debts, except the queen's, on the death of their master. (2 *Bla. Com.* 511: but this may be open to doubt; *see* 2 *Will. Exors.* 748.)

Priority in payment of, in case of death.

Legacies to servants are generally, in equity, considered as a satisfaction of their wages, unless the contrary appear; and slight facts will make it so appear. (2 *Will. Exors.* 931.)

Legacy, when a satisfaction of.

If a servant has left his service for a considerable time, without claiming wages, the presumption is, that all his wages have been paid. (*Sellon* v. *Norman*, 4 *C. & P.* 80.) And in a case cited in 4 *C. & P.* 81, *n.*, tried some time back at Guildhall, which was an action by a workman at a sugar-refiner's, a witness proved that the plaintiff had worked there for more than two years. But *Abbott*, C. J., said that he should direct the jury to presume that men employed in that way were regularly paid every Saturday night, unless some evidence was given on the part of the plaintiff to satisfy the jury that the plaintiff had, in point of fact, never been paid; and, as no such evidence was produced, the plaintiff was nonsuited. (*And see* 3 *Camp.* 10; 1 *Stark.* 136.)

Payment, when presumed.

A servant, engaged at thirty guineas a year and a suit of clothes, was provided with a livery suit on his entering into the service. He was wrongfully turned away in the year; held, he could not maintain *trover* for the suit of clothes. (*Crocker* v. *Molyneux*, 3 *C. & P.* 470; *and see Archard* v. *Hornor*, *Id.* 349.)

Servants' right to clothes.

In the absence of any contract or usage from which a contract may be inferred to that effect, the master is not liable to any expenses incurred by the servant in going to his master's premises for the purpose of entering into the service, or of returning from his master's premises after the dismissal.

Expenses of returning home.

In a case where the directors of a mining company in South America agreed to employ the plaintiff as superintendant of mines for three years at a salary increasing yearly, and the directors were at liberty to dissolve the agreement at any time on giving the plaintiff twelve months' notice, or paying him twelve months' salary in lieu of such notice, and a reasonable sum towards defraying his expenses to England, and if the plaintiff served the three years he should be entitled to the expenses attending the return of himself and his family. The directors dismissed him before the expiration of the second year, without giving him notice or paying him the year's salary:—Held, that he was only entitled to one year's salary from the date of his dismissal, and to his own expenses for his return to England; and the jury having found for those sums only, the court refused to increase the verdict by adding expenses incurred by the plaintiff for the return of his family, or for the salary which would have accrued from the time of his dismissal to the end of the third year, when his service would have terminated. (*French* v. *Brook*, 4 *M. & P.* 11.)

---

4. Liability of Master for Acts of Servant.

In general the master is not criminally responsible for the act of his servant, unless he expressly commanded it. (*R.* v. *Huggins*, 2 *Str.* 885; *per Raym. C. J., Lamb's case*, 9 *Co.* 59.) It has, however, been held that a master is indictable for a nuisance done by his servant, as for throwing dirt in the highways. (*Tuberville* v. *Stampe*, 1 *Ld. Raym.* 264; *Carth.* 425, *S. C.*) So a baker has been held indictable for the sale of bread in which his servant had improperly mixed alum. (*R.* v. *Dixon*, 3 *M. & Sel.* 11.)

Liability for crimes.

1. *Domestic Servants, Clerks, &c.*

So in a case of a libel, it has been held that the person who derived profit from, and furnished the means of carrying on, a newspaper, intrusting the publication to one whom he selected, and in whom he confided, is criminally answerable for what appeared therein, though it could not be shown that he was concerned in the individual publication; (*R.* v. *Gutch*, 1 *M. & M.* 437; *R.* v. *Walter*, 3 *Esp.* 21; *see R.* v. *Almon*, 2 *Bur.* 2686; *Colburn* v. *Patmore*, 1 *C. M. & R.* 73; 4 *Tyrw.* 677;) and though indeed, by the recent stat. of 6 & 7 Vict. c. 96, s. 7, the newspaper proprietor would not be so answerable to an indictment for a libel, if he could prove that the publication was made without his authority, consent, or knowledge, and that it did not arise from want of due care or caution on his part, the principle on which he may be responsible still continues. So in informations for breaches of the revenue laws, the employment of a servant in the defendant's usual course of business, has been held sufficient evidence to be left to a jury, who may, if they think fit, thence presume that such servant was authorized to do the prohibited act with which it is sought to charge his master. (*Att. Gen.* v. *Siddon*, 1 *Tyrw.* 41; 1 *C. & J.* 220, *S. C.*; *Att. Gen.* v. *Riddell*, 2 *Tyrw.* 523; *Smith, Merc. Law*, 130.)

It seems, that the servant also is criminally liable in these cases; for Mr. *Hawkins* says, that a servant is not excused the commission of any crime by the command or coercion of his master. (1 *Haw. c.* 1, *s.* 14.)

Liability for wrongs.

A master is in general liable for *wrongs* committed by his servant while engaged in his service. Clearly he will be so if the servant commit the wrong by the express command or encouragement of his master, and this, though the servant is not thereby excused, for he is only to obey his master in matters that are honest and lawful. (1 *Bla. Com.* 429; *Gregory* v. *Piper*, 9 *B. & C.* 591.)

A master is responsible for the *negligence* of his servant acting in the prosecution of his business, though not under his immediate direction or express orders. As if one of his servants lame a customer's horse in shoeing him, or drive his master's carriage so unskilfully that it injures the person or property of a stranger. Many other cases might be put, illustrating the general principle, (*see Smith's Merc. Law*, 127, *citing Brucker* v. *Fromont*, 6 *T. R.* 659. *See* 1 *Raym.* 739; *Harry* v. *Rickman*, 2 *M. & M.* 126; *Leslie* v. *Pounds*, 4 *Taunt.* 649; *Weyland* v. *Elkins*, *Holt*, 227; *Lyons* v. *Martin*, 8 *Ad. & E.* 512,) which seems to extend so far as to make the employer responsible, at least in some cases, not only for the act of his immediate agent, but for that of a sub-agent employed by him. Thus where A. employed B. to repair his house, B. contracted with C. to do the work, and C. with D. to furnish the materials, which D.'s servant carelessly left on the road, and thereby caused an injury to the plaintiff:—It was held, that A. was answerable for the mischief. (*Bush* v. *Steinman*, 1 *B. & P.* 409; *Matthews* v. *West Mid. W. W. Co.*, 3 *Campb.* 403; *Harris* v. *Baker*, 4 *M. & S.* 27; *Weyland* v. *Elkins*, *Holt*, 227.) In an action on the case for damage done to the plaintiff's cabriolet, against which the defendant's cart was driven, the defendant will be liable, although it should appear that the defendant's servant was not driving at the time of the accident, but had intrusted the reins to a stranger who was riding with him, and who was not in the service of the defendant. (*Booth* v. *Mister*, 7 *C. & P.* 66.)

The master, though liable for the negligence of his servant while engaged in his service, yet he is not so for his *wilful* and *malicious* trespass. Thus if a servant driving a carriage in order to effect some purpose of his own, wantonly strike the horses of another person, and produce the accident, the master is not liable; though if, intending to effect his master's orders, he strike but injudiciously, and to extricate himself from a difficulty, that will be negligent and careless conduct, for which the master will be liable, being an act done in pursuance of the servant's employment. (*Per curiam*, *Croft* v. *Alison*, 4 *B. & Ald.* 590; *M'Manus* v. *Crickett*, 1 *East*, 106; *Smith, Merc. Law*, 129.) A master is answerable in trespass for damage occasioned by his servant's negligence in doing a lawful act in the course of his service; but not so if the act is in itself unlawful, and

is not proved to have been authorized by the master. (*Lyons* v. *Martin*, 8 *Ad. & E.* 512; 3 *Nev. & P.* 509, *S. C.*) As if a servant authorized merely to distrain cattle, damage feasant, drives cattle from the highway into his master's close and there distrains them. (*Ib.*)

The master has been thought to be responsible, not merely for the negligence but for the deliberate *fraud* of his servant, committed in the execution of his employment, though without the principal's authority; as, for instance, by selling false jewels for true ones: the reason given for this by Lord C. J. *Holt*, appears a sensible one; "Seeing," says he, "that some one must be a loser by the deceit, it is more reasonable that he who employs and confides in the deceiver should be the loser than a stranger." (*See the observations of Bayley, B., in Att. Gen.* v. *Siddon*, 1 *Tyrw. R.* 46, 47; 1 *C. & J.* 220, *S. C.*; *Hern* v. *Nichols*, 1 *Salk.* 289, *cited by Parke, B., in Cornfooth* v. *Folke*, 6 *M. & W.* 358; *Smith, Merc. Law*, 129.)

To render the master liable in these cases the servant must have been in the prosecution of his master's business, and within the scope of the servant's employment. Therefore if a servant, without his master's knowledge, take his master's carriage out of the coach-house, and with it commit an injury, the master is not liable; because he has not, in such case, intrusted the servant with the carriage. But, whenever the master has intrusted the servant with the control of the carriage, it is no answer that the servant acted improperly in the management of it; but the master, in such case, will be liable, because he has put it in the servant's power to mismanage the carriage, by intrusting him with it. (*Sleath* v. *Wilson*, 9 *Car. & P.* 607; 2 *M. & Rob.* 181, *S. C.*) Therefore, where a servant, having set his master down in Stamford-street, was directed by him to put up in Castle-street, Leicester-square; but, instead of so doing, went to deliver a parcel of his own in the Old-street-road, and in returning along it drove against an old woman, and injured her:—It was held, that the master was responsible for his servant's acts. (*Ib.*) So if a servant driving his master's cart, on his master's business, make a detour from the direct road for some purpose of his own, his master will be answerable in damages for any injury occasioned by his negligent driving while so out of the road. (*Joel* v. *Morison*, 6 *C. & P.* 501.) But if a servant take his master's cart without leave, at a time when it is not wanted for the purposes of business, and drive it about solely for his own purposes, the master will not be answerable for any injury he may do. (*Ib.*) So in another case, a van was standing at the door of A., from which A.'s goods were unloading, and A.'s gig was standing behind the van. B.'s coachman, who was driving B.'s carriage, came up, and there not being room for the carriage to pass, the coachman got off his box, and laid hold of the van horse's head; this caused the van to move, and thereby a packing case fell out of the van upon the shafts of the gig, and broke them:—It was held, that B. was not liable for this, as the coachman was not acting in the employ of B. at the time the matter occurred. (*Lamb* v. *Palk*, 9 *Car. & P.* 629.) A cornfactor was absent from his shop, and during his absence his sister managed the business: she wanted to send out some corn to a customer, and for this purpose employed a person who occasionally worked for her brother, and who at the time of such employment was in a state of inebriety: this man, contrary to the practice of the cornfactor's shop, took out the corn on a small warehouse truck, which he negligently left in the road, whereby a person driving along in a chaise was injured: the cornfactor was held liable in an action at the suit of this person, on the ground that the employment of a tipsy man was an act of negligence, and that by such employment he set the whole thing in motion, and must therefore be answerable for the consequences. (*Wanstall* v. *Pooley*, *Q. B. M. T.* 1841; 6 *Cl. & Fin.* 910, *n.*) A person occasionally employed by the defendant as his servant, being sent out by him on his business, took the horse of another person, in whose service he also worked, and, in going, rode over the plaintiff. At the trial, it was left to the jury to say whether or not the horse was taken by the servant with the implied consent

1. *Domestic Servants, Clerks, &c.*

or authority of the defendant; and they having found a verdict for the plaintiff, the court refused to grant a new trial. (*Goodman* v. *Kennell*, 1 *M. & P.* 241; 3 *C. & P.* 167, *S. C.*)

Nice questions have arisen as to who is the master of a party, who is no doubt the servant of some one. We will refer to some of the late leading cases on the subject. A party, consisting of the defendant and others, hired, for a day's excursion, a carriage and post-horses, driven by postilions, who were the servants of the owner of the horses: the defendant rode upon the box: the postilions, in endeavouring to force their way into a line of carriages, overturned a gig, and seriously injured the plaintiff, who was in the gig: the defendant, at the time and afterwards, held himself out as responsible for the accident, and used expressions showing that he had a control over the postilions at the time it happened:—It was held, that he was liable in trespass. (*M'Laughlin* v. *Pryor*, 4 *Man. & G.* 48; 4 *Scott, N. R.* 655; 1 *Car. & M.* 354, *S. C.*)

If horses are hired out to draw a private carriage, but are driven by the servant of the person who let them, he shall be liable for any injury done by them. (*Samnell* v. *Wright*, 5 *Esp.* 263.) The owner of a carriage hired four post-horses and two postilions of a livery-stable keeper for the day, to take him from London to Epsom and back: in returning, the postilion damaged the carriage of C.:—Held, that the livery-stable keeper, as owner of the horses and master of the postilions, was liable to C. for such damage. (*Smith* v. *Lawrence*, 2 *M. & R.* 1; *see the case of Laugher* v. *Pointer*, 5 *B. & C.* 547.)

A person who drives in his own carriage with job horses, and a driver hired to accompany them, is not liable for any injury caused to a third party by negligent driving, or carelessness of the person so hired, even although he had selected that person from among the servants usually employed by the job master for that purpose. A person hiring job horses and a driver, may, however, in such case, render himself liable by his own conduct, such as directing the servant to drive in a particular manner, which caused the injury, &c., but this is not in respect of the general relation of master and servant. (*Quarman* v. *Burnett*, 6 *Mee. & W.* 499.)

A party who had a carriage of his own, had been in the habit of hiring horses and a servant from a particular job master, and was in the habit of paying the servant a fixed sum for each drive, and had provided him with a livery to wear while driving. The servant, on returning from a drive, went into the house of the hirer to change his livery, leaving the horses without any one to mind them, who accordingly ran off:—Held, that the above facts did not constitute him the servant of the hirer of the horses, so as to render the latter liable for injury done by them to the carriage of a third party. (*Ib.*)

A. and B. are partners in the business of public carriers; by a contract between them, A. finds horses and drivers for certain stages, and B. supplies them for the remaining stages. They are, notwithstanding this division of the concern, jointly responsible for the misconduct and negligence of their drivers and servants throughout the whole distance; and it is no defence to B. that the servant by whom an injury is committed was the special servant of A., and hired and paid by A. alone. (*Weyland* v. *Elkins*, *Holt*, 227; *Waland* v. *Elkins*, 1 *Stark.* 172; *see Moreton* v. *Hardern*, 4 *B. & C.* 223; 6 *D. & R.* 275, *S. C.*)

A butcher, who had purchased a beast at Smithfield, in the city of London, employed a licensed drover to drive it home. By the bye-laws of the city, such beasts must, within the limits of the city, be driven by licensed drovers, unless driven by the purchasers themselves. The drover employed a boy to drive the beast, and through the boy's negligently driving, the beast, after it had passed the limits of the city, ran into the plaintiff's premises and damaged his property:—It was held, that, although the damage was not done within the city, the boy was not to be deemed the servant of the owner of the beast, and that the owner therefore was not liable. (*Milligan* v. *Wedge*, 4 *Per. & D.* 714; 1 *Ad. & E. N. S.*, 714, *S. C.*)

1. *Domestic Servants, Clerks, &c.*

Generally, a sub-contractor is not deemed in law the servant of the party employing him, so as to render the latter liable for any accident occasioned by his misconduct or negligence. Therefore, where the defendant, a builder, was employed by the committee of a club to execute certain alterations at the club-house, including the preparation and fixing of gas-fittings: he made a sub-contract with B., a gas-fitter, to execute this part of the work: in the course of doing it, through B.'s negligence, the gas exploded, and injured the plaintiff:—It was held, that the defendant was not liable in case for this injury. (*Rapson* v. *Cubitt*, 9 *Mee. & W.* 710; 1 *Car. & M.* 64, *S. C.*) A master-porter employed by a merchant at Liverpool, to hoist or lower goods, cannot be considered in the light of a bailee, but of a servant; and the party employing him is liable for any injury caused through his negligence or want of skill. (*Randleson* v. *Murray*, 3 *Nev. & Per.* 239.)

Liability for contracts.

A master is liable for the contract of his servant, within the scope of his employment, on the ground of an authority delegated by the master expressly or impliedly to the servant. (*Bac. Ab. Master and Servant*, (K).) The responsibility for the act of a domestic servant does not rest on the circumstance of the master being *pater familias:* the master's assent must in all cases appear either by express evidence thereof, or by the proof of facts, from which the law raises an inference that such assent was given. (*Chit. Jun. Contr.* 174.) If a person, who has been in the habit of paying ready money, gives his servant money to buy meat for the use of the family, and the servant, instead of paying ready money, orders the meat on credit, and embezzles the money, the master is not liable. (*Stubbing* v. *Heintz, Peake*, 47.) And so, where the master gives the servant money beforehand to pay for goods. (*Rusby* v. *Scarlett*, 5 *Esp.* 76, *Ellenborough.*) But where he authorizes his servant to take up goods, and afterwards gives him money to pay, if the servant embezzle the money, the master is liable for the goods. (*Id.*) When the master of a family is in the habit of paying ready money for articles furnished in certain quantities to his family, if the tradesman suffers other goods of the same sort to be delivered without informing the master, or satisfying himself that they were for his use, when, in fact, they were not, the master shall not be liable. (*Pearce* v. *Rogers*, 3 *Esp.* 214; *and see Stubbing* v. *Heintz, Peake*, 47; *Filmer* v. *Lynn*, 4 *Nev. & M.* 559; 1 *Harr. & W.* 59.) A master is not liable for spirituous liquors ordered by his butler in the name of the master, unless he had on former occasions paid for goods so ordered, or there is evidence to show that the butler had authority from the master for so doing. (*Maunder* v. *Conyers*, 2 *Stark. C. N. P.* 281.) Where articles are furnished to the use of a master, though the servant was by agreement to provide them, the master is liable to the tradesman who furnished them. (*Precious* v. *Abel*, 1 *Esp.* 350.) If a coachman go in his master's livery, and hire horses, which his master afterwards uses, the master is bound to pay for the hire of the horses, although he had previously agreed to pay the coachman a large salary to provide horses; unless the person of whom the horses were hired had some notice that the coachman hired them on his own account, and not for his master. (*Rimell* v. *Sampayo*, 1 *C. & P.* 254.) But if a servant employ a tradesman to do any work who has not been employed before by the master, and the tradesman does the work without communication with the master, though the thing to which it was done was the property of the master, he is not liable. (*Hiscot* v. *Greenwood*, 4 *Esp.* 174.)

---

5. Right of Master to correct his Servant.—Liability for Injuries to, in his Service.

Master beating servant.

The master is allowed by law, with moderation, to chastise his *apprentice* for negligence, or other misbehaviour, (1 *Bla. Com.* 428; 1 *Haw. c.* 29; *Winstone* v. *Linn*, 1 *B. & C.* 469; 2 *D. & Ry.* 465; 1 *D. & R. M. C.*

1. *Domestic Servants, Clerks, &c.*

339, *S. C.; title "Apprentice,"* Vol. I. p. 193,) though he cannot delegate that authority to another. (9 *Co.* 76.) But a master has no such power over a domestic or other servant. (*Winstone* v. *Linn*, 1 *B. & C.* 469; 2 *D. & R.* 465; 1 *D. & R. M. C.* 339, *S. C.*)

And if he do beat him, it may be a good cause for leaving the service. (*Dalt. c.* 58, *p.* 141; *F. N. B.* 168; 1 *Bla. Com.* 428.)

Where a master, in correcting his servant, happens to occasion his death, it shall be deemed homicide by misadventure; yet if in his correction he be so barbarous as to exceed all bounds of moderation, and thereby occasion the servant's death, it is manslaughter at least; and if he make use of an instrument improper for correction, and apparently endangering the servant's life, it is murder. (1 *Haw. c.* 29, *s.* 5; *title "Homicide,"* Vol. III. p. 803.)

If the workman or labourer shall depart out of his master's service, and the master happen afterwards to lay hold of him, yet the master in this case may not beat or forcibly compel such workman or labourer against his will to return or tarry with him, or do his service; but either he must complain to the justice, for such workman or labourer's departure, in case the justice has jurisdiction, or he may have an action against him. (*Dalt. c.* 121, *p.* 281, 282.)

A master may be liable for the ill-treatment of a servant of tender years, by not providing him with sufficient sustenance and necessaries; and if the servant's health be thereby injured, he might perhaps be liable to be indicted as for a misdemeanor. (*See title "Apprentices,"* Vol. I. p. 193, 194.)

Sailor or soldier.

If a sailor or soldier be guilty of disobedience, disorderly conduct, or mutiny, he may be corrected in a reasonable manner to secure subordination and prevent mutiny. (*See Abbott on Ship.* 155; *B. N. P.* 19; *Hanxaford* v. *Hunn*, 2 *C. & P.* 148; *Watson* v. *Christie*, 2 *B. & P.* 224; *Capt. Kidd's case*, 5 *State Trials*, 287; *Lamb* v. *Burnett*, 2 *C. & J.* 291; *Murray* v. *Moutrie*, 6 *C. & P.* 471.)

Liability of master for injury to servant.

A master is not liable to his servant, for an injury sustained by the latter in the execution of his orders, but not arising from any wilful misbehaviour on the master's part, therefore he is not liable for an injury sustained by his servant, caused by the breaking down of a carriage in which the servant was riding on his master's business, through a defect in the carriage of which the master was not aware. (*Priestly* v. *Fowler*, 3 *Mee. & W.* 1.)

---

6. Right of Master to defend his Servant, and vice versâ.

Right of, to defend servant.

According to some opinions, a master shall not forfeit a recognizance of the peace for beating another in defence of his servant; nor the servant for beating another in defence of his master. (1 *Haw. c.* 60, *s.* 24.) But in *Leeward* v. *Basilee*, (1 *Salk.* 407; 1 *Ld. Raym.* 62; *B. N. P.* 18,) it was held by the court, that a servant may justify an assault in defence of his master, but not a master in defence of his servant; because he might have an action for the loss of his service.

In the case of *Tickel* v. *Read*, on an action of assault and battery, the defendant pleaded a special plea in justification, that he assisted his servant, whom the plaintiff was beating. It was contended, that the law will not justify a master interposing on an assault against his servant, by assaulting the person who beats the servant, as it doth a servant in like case interposing for his master; because it is the duty of the servant, who is hired to serve and be assistant to his master's person, but not so the master to his servant. On the other hand, it was contended that the duty of the master and servant is reciprocal; and if the servant owe to the master fidelity and obedience, the master owes to the servant protection and defence; and therefore that the defendant might well justify by this plea. Ld. *Mansfield*, C. J.: "I cannot say that a master interposing, when his

servant is assaulted, is not justifiable, under the circumstances of the case, as well as a servant interposing for his master: it rests on the relation between master and servant." (*Lofft*, 215; *see further, title "Assault,"* Vol. I. p. 283.)

---

7. Right of Master to his Services.—Enticing away, &c. a Servant.

Enticing away a servant.

The remedy now pursued for retaining a servant in the service of another is an action by the old master against the new one, and the servant, or either of them, for damages. But, in order to entitle a man to the action, it is as necessary now as when the 35 Edw. III. st. 1, c. 1, (repealed by the 5 Eliz. c. 4,) was in force, that the new master should *know* of the servant's engagement with the other at the time of his retaining him, or that he should afterwards refuse to restore him upon information or demand. (*Fawcet* v. *Beavres et ux.*, 2 *Ler.* 63; 1 *Leon.* 240.)

The retaining another person's servant during the time he has agreed to serve his present master, as it is an ungentlemanlike, so it is also an illegal act; for every master has, by his contract, purchased for a valuable consideration the service of his domestics for a limited time. The inveigling or hiring his servant, which induces a breach of this contract, is therefore an injury to the master; and for that injury the law has given him a remedy by a special action on the case; and he may also have an action against the servant for the non-performance of his agreement. (3 *Bla. Com.* 142; *F. N. B.* 167.)

And an action will lie for receiving or continuing to employ the servant of another after notice, without enticing him away. Therefore, where no fault could be imputed to the defendant for taking the party into his service in the first instance, because then he had no notice of such party's prior engagement, yet, as soon as he had notice of that fact, he ought to have discharged him. A person who contracts with another to do certain work for him is the servant of that other till the work is finished, and no other person can employ such servant to the prejudice of the first master: the very act of giving him employment is affording him the means of keeping out of his former service. (*Blake* v. *Lanyon*, 6 *T. R.* 221.)

(*Hart* v. *Aldridge*, 1 *Cowp.* 54.) On a special verdict, the jury found that the plaintiff, being a shoemaker, employed a journeyman to make up shoes for him, and retained him by the piece, but not for any certain time. This man being hired by another, and leaving his service, the work being unfinished, the shoemaker brought his action against the person so hiring him for enticing his servant out of his service. The question was, whether this person be a *servant* of the plaintiff, so that he may maintain an action and recover damages on his being enticed from his service; and whether there be sufficient upon the verdict to entitle the plaintiff to recover. Lord *Mansfield*, C. J., asked how they defined the word *journeyman*. It was answered, that they apprehended it to mean no more than a man who was out of his time, and was not master. Lord *Mansfield* said further, "Doth not a journeyman imply the particular relation of *servant* to the man? It is apparently a *service*. The jury have found expressly that he was *hired* by the piece; and this is a sufficient retainer. *Journeyman*, in the original etymology, is a servant for the *day*, in whose service the master hath certainly an interest. Many servants are taken to work by the piece; if otherwise, they would often be idle. This case lies upon the circumstance of his being found a *journeyman*: otherwise it might have been that the master took any who pleased to work for him to stay as long as he pleased, and go when he pleased." And *Aston*, J., said, "Every man is entitled to an action who hath sustained damages by wrong; therefore, if a servant be retained for any special work, and departs from this unfinished, an action will lie against any who seduces him to depart.

1. *Domestic Servants, Clerks, &c.*

And the seducer or enticer is much the greater offender." Judgment for the plaintiff.

No action lies for seducing a servant from his master, who has paid the penalty stipulated by his articles for leaving him. (*Bird* v. *Randall*, 3 *Burr.* 1345; 1 *Bla. R.* 373, 387, *S. C.*)

Nor for inducing a servant to leave his master's service at the expiration of the time for which he had hired himself, although he had no previous intention of quitting his master's service. (*Nichol* v. *Martyn*, 2 *Esp.* 734.)

Where negroes, in a state of slavery in a colony of Spain, escaped from their master's plantation, and took refuge and were received on board a *British* ship of war, whilst she was stationed at an island captured by his majesty's arms from the *United States* in time of war, and, after notice given to the officers commanding on the station that they were runaway slaves, the officers carried them to and left them at a *British* colony:—Held, by the court of King's Bench, that a *British* merchant, resident in the colony, who claimed the slaves as his property, could not maintain an action against the officers for harbouring and detaining such negroes, although, by the *lex loci* from whence they escaped, slavery was permitted and tolerated. (*Forbes* v. *Cochrane*, 3 *D. & R.* 679; 2 *B. & C.* 448, *S. C.*)

When servant may solicit customers.

A servant while in his master's service, in a trade, may solicit business from his customers for himself, when his service is at an end, and he sets up on his own account. (*Nichol* v. *Martyn*, 2 *Esp.* 732.) And therefore if any loss is to be apprehended from such an attempt, it should be specially prohibited and limited to a certain distance from the place of employment, so as not to constitute too general a restraint of trade. (*Young* v. *Timmins*, 1 *C. & J.* 331.)

When master entitled to inventions, &c.

If a servant, while in the employ of his master, make an invention, that invention belongs to the servant, and not to the master; but *semble*, that if the master employs a skilful person *for the express purpose* of inventing, the inventions made by him will so much belong to the master, as to enable him to take out a patent for them. (*Bloxam* v. *Elsee*, 1 *C. & P.* 558.)

Master may sue for torts to servant, occasioning loss of service.

A master may maintain an action of trespass or on the case for the seduction of, or for an assault, or any other trespass upon his servant, if any loss of service, however slight, has been occasioned by it. And it has been recently decided, that an action on the case may be maintained by the master for an injury done to his servant whereby he has lost his services, though the injury done was not direct but consequential only; and the servant could not have maintained an action of trespass for such injury; but must have sued in case. (*Martinez* v. *Gerber*, 3 *M. & Gr.* 88; 3 *Scott*, *N. S.* 386, *S. C.*)

---

8. Characters of Servants.

32 Geo. III. c. 56.

By the 32 Geo. III. c. 56, "for preventing the Counterfeiting of Certificates of the Characters of Servants," after reciting, that "many false and counterfeit characters of servants have either been given personally or in writing by evil-disposed persons, being, or pretending to be, the master, mistress, retainer, or superintendent of such servants, or by persons who have actually retained such servants in their respective service, contrary to truth and justice, and to the peace and security of his majesty's subjects: And whereas the evil herein complained of is not only difficult to be guarded against, but is also of great magnitude, and continually increasing, and no sufficient remedy has hitherto been applied;" it is enacted,

Personating a master, &c., or giving a false character,

"That if any person or persons shall falsely personate any master or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent, or servant of any such master or mistress, and shall either personally or in writing give any false, forged, or counterfeited character to any

1. *Domestic Servants, Clerks, &c.*

32 Geo. III. c. 56.

person offering him or herself to be hired as a servant into the service of any person or persons, then, and in such case, every such person or persons so offending shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided."

or asserting that servant has been hired for a period of time, or in a particular station;

Sect. 2. "If any person or persons shall knowingly and wilfully pretend, or falsely assert, in writing, that any servant has been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which or in which he, she, or they shall have hired or retained such servant in his, her, or their service or employment, or for the service of any other person or persons, that then, and in either of the said cases, such person or persons so offending, as aforesaid, shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided."

or was discharged at any other time or had not been hired in any previous service; contrary to the fact;

Sect. 3. "If any person or persons shall knowingly and wilfully pretend, or falsely assert, in writing, that any servant was discharged, or left his, her, or their service at any other time than that at which he or she was discharged, or actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to truth, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided."

or offering himself as a servant, pretending to have served where he had not, or with a false certificate, or altering certificate;

Sect. 4. "If any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service in which such servant shall not actually have served, or with a false, forged, or counterfeit certificate of his or her character, or shall in anywise add to or alter, efface or erase any word, date, matter, or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress, or by any other person or persons duly authorized by such master or mistress to give the same, that then, and in either of the said cases, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided."

or pretending not to have been in service

Sect. 5. "If any person or persons, having before been in service, shall, when offering to hire himself, herself, or themselves, as a servant or servants in any service whatsoever, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant, that then, and in such case, such person or persons shall forfeit and undergo the penalty or punishment hereinafter mentioned and in that behalf provided."

Penalty, 20*l.*

Application of forfeiture.

Commitment.

Sect. 6. "If any person or persons shall be convicted of any or either of the offence or offences aforesaid, by his, her, or their confession, or by the oath of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence or offences shall have been committed, (which oath such justices are hereby empowered and required to administer,) every such offender or offenders shall forfeit the sum of 20*l.*; one moiety whereof shall be paid to the person or persons on whose information the party or parties offending shall have been convicted, and the other moiety thereof shall go and be applied for the use of the poor of the parish wherein the offence shall have been committed; and if the party who shall have been so convicted shall not immediately pay the said sum of 20*l.* so forfeited, together with the sum of 10*s.* for the costs and charges attending such conviction, or shall not give notice of appeal, and enter into recognizance in the manner hereinafter mentioned and in that behalf provided, such justices shall and may commit every such offender to the house of correction, or some other prison, of the county, riding, division, city, liberty, town, or place, in which he or she shall have been convicted, there to remain, and be kept to hard labour, without bail or mainprize, for any time not exceeding three months, nor less than one month, or until he or she pay the said sum so forfeited, together with such costs and charges, as aforesaid."

Informer competent witness.

Sect. 7. "Whereas it most frequently happens, that no person is present

1. *Domestic Servants, Clerks, &c.*

at or privy to the giving of the character of a servant, except the persons by and to whom the same is given;" it is enacted, "That the informer, in any of the cases aforesaid, shall be, and shall be deemed and taken to be, a good and competent witness in law, notwithstanding he shall be entitled to a part of the said penalty where the same shall be levied, as aforesaid."

32 Geo. III. c. 56

Offenders discovering accomplices indemnified.

Sect. 8. "If any servant or servants, who shall have been guilty of any of the offences aforesaid, shall, before any information has been given or lodged against him, her, or them for such offence, discover and inform against any person or persons concerned with him, her, or them in any offence against this act, so as such offender or offenders be convicted of such offence in manner aforesaid, every such servant or servants so discovering and informing shall thereupon be discharged and indemnified of, from, and against all penalties and punishments to which, at the time of such information given, he, she, or they might be liable by this act, for or by reason of such his, her, or their own offence or offences."

Conviction, form of.

Sect. 9. "For the more easy and speedy conviction of offenders against this act," it is enacted, "That all justices of the peace, before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet*,

Be it remembered, that on the day of , in the year of our Lord , A. B. is convicted before us, two of her majesty's justices of the peace for the county of [set forth the offence, and the time and place when and where the same was committed, as the case may be]. *Given under our hands and seals, the day and year aforesaid.*"

Appeal.

Want of form.

Certiorari.

Sect. 10. "If any person shall think himself or herself aggrieved by any thing done in pursuance of this act, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county or place wherein the cause of complaint shall have arisen; such appellant entering into a recognizance, with two sufficient sureties, in the sum of 20*l.* each, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by such justices at such general or quarter sessions, upon due proof of such notice being given, as aforesaid, and of the entering into such recognizance; which said justices shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they, the said justices, shall think proper, and the determination of such general or quarter sessions shall be final, binding, and conclusive, to all intents and purposes; and no conviction or order made concerning any matters aforesaid, or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by *certiorari*, or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster.

Liability for giving false character.

Mr. *Christian* mentions a case tried at the sittings after *Trinity Term*, 1792, at Guildhall, against a person who had knowingly given a false character of a man to the plaintiff, who was thereby induced to take him into his service. But this servant soon afterwards robbed his master of property to a great amount, for which he was executed. And the plaintiff recovered damages against the defendant to the extent of his loss. This was an action of great importance to the public, and there can be no doubt but it was founded on strict principles of law and justice. (*Parley* v. *Freeman*, 1 *Bla. Com.* 432, *Christian's Edit.*)

Master not bound to give a character.

In an action on the case, the declaration stated that the plaintiff's wife, having been retained by the defendant as a servant, was dismissed from the said service; that, after she was so dismissed, she had applied to a person of the name of *Stewart*, for the purpose of being retained and hired as a servant; that Mrs. *Stewart* was ready and willing to have hired and taken her into her service, if the defendant would have given her a

character, and such character was satisfactory; that it was the duty of the defendant by law to have given her such character as she deserved; and then assigned a breach, that the defendant, not regarding such her duty, wholly refused to give her any character whatever; by reason whereof the said Mrs. *Stewart* refused to hire her into her said service. Plea of not guilty. On opening the pleadings, Ld. *Kenyon*, C. J., addressing himself to the plaintiff's counsel, said, "Can you make any thing of this action? I have read an abstract of the record; it is impossible to support this action." Upon the plaintiff's counsel replying, that he had no case, his lordship proceeded to observe, "There is no case; there is no foundation in law for this action. What one's real feeling would dictate, is one thing; but can you say that there is a legal obligation on one to give a servant a character at all? You are, indeed, to take care, if you do give a character, to give a true one; but you are not bound to give a character at all. I am confident that this action cannot be maintained." (*Carrol* v. *Bird, Sittings at Westm. after T. T.* 40 *Geo. III.*; 3 *Esp.* 201, *S. C. And see Ashover* v. *Brampton, Cald.* 11, *ante*; *Chit. Gen. Prac.* 78.)

1. *Domestic Servants, Clerks, &c.*

And when a master gives a bad character of a servant, the latter cannot maintain an action against the former, unless the account given be *malicious* as well as false; express malice must be proved. (*B. N. P.* 8; *per Lord Mansfield, in Hargreave* v. *Le Breton*, 4 *Burr.* 2425.) The action will not lie, even though the master make specific charges of fraud. (*Weatherstone* v. *Hawkins*, 1 *T. R.* 110.) To prove such express malice, evidence that the character given is *false*, is admissible. (*Rogers* v. *Clifton*, 3 *B. & P.* 587; *King* v. *Waring*, 5 *Esp.* 13.)

When liable to action for defamation.

In an action for libel, it appeared that the defendant, with whom the plaintiff had lived as servant, in answer to inquiries respecting her character, wrote a letter imputing misconduct to her whilst in that service, and after she left it; and the defendant also made similar parol statements to two persons that had recommended the plaintiff to her:—It was held, that neither the letter itself nor the parol statements proved malice, and that consequently the letter was a privileged communication, and the plaintiff not entitled to recover. (*Child* v. *Affleck*, 4 *Man. & Ry.* 338; 9 *B. & C.* 403, *S. C.*)

A. having discharged his servant, and hearing that he was about to be engaged by B., wrote a letter to B., and informed him that he had discharged him for misconduct. B., in answer, desired further communication. A. then wrote a second letter to B., stating the grounds on which he had discharged the servant. In an action by the servant against A., for a libel contained in this letter, it was held, that, assuming the letter to be a privileged communication, it was properly left to the jury to consider whether the second letter was written by A. *bonâ fide*, acting under a belief that he was discharging a duty which he owed to the party who was about to take the plaintiff into his service, or with an intention to injure the servant. (*Pattison* v. *Jones*, 3 *Man. & R.* 101; 8 *B. & C.* 578, *S. C.*) *Et per Bayley*, J., *id.*:—"Generally speaking, any thing said or written by master when he gives the character of a servant is a privileged communication. But if the supposed libel be not communicated *bonâ fide*, it does not fall within the protection which the law gives to a privileged communication." (*And see Kelly* v. *Partington*, 2 *Ner. & M.* 460; *Warr* v. *Solly*, 6 *C. & P.* 497.)

In answer to an inquiry as to the character of a governess, the defendant wrote a letter, in which she said, "I parted with her on account of her incompetency, and not being lady-like nor good tempered." To this letter there was the following postscript:—"May I trouble you to tell her, that, this being the third time I have been referred to, I beg to decline any further applications." In an action by the governess against the defendant for writing this letter, she gave evidence tending to negative the statement in it of her qualifications, and she proved that previously the writer had recommended her as a governess. The judge directed the jury, that

2. *Husbandmen, Labourers, Artificers, &c.*

the letter, being an answer to an inquiry into the character of a servant, *primâ facie*, it was privileged; but that the letter itself, and the facts proved, were some evidence for them, that the writer was actuated by express malice; to rebut any inference of which the defendant might have given evidence to show that the statement itself of the character was a true one, or that she believed, or had reason to believe, it to be a true one:—Held, that this direction was right. (*Fountain* v. *Boodle*, 2 *Gale & D.* 455; 3 *Ad. & E., N. S.*, 5, *S. C.*)

If a servant, when he is taken into a service, brings a written character, and is afterwards dismissed for ill behaviour; it seems, that the master does no wrong, if before he returns the character to the servant, he writes upon it that the person was afterwards in his service and dismissed for ill behaviour. (*Taylor* v. *Rowan*, 7 *C. & P.* 70.)

II. Husbandmen, Labourers, Artificers, Calico Printers, Colliers, Glassmen, Handicraftsmen, Keelmen, Manufacturers, Miners, Pitmen, Potters, Tinners, &c.

Herein of—

1. *The Contract of Service for, and who compellable to serve, and how; and herein of the Statute of Labourers*, 5 *Eliz. c.* 4, 864.
2. *Colliers or Miners working contrary to Contracts, fraudulently stacking Coal, &c.*, 871.
3. *Complaints by Servants against Masters as to Wages, &c.*, 872.
4. *Complaints by Masters against Servants*, 879.

1. The Contract of Service, who compellable to serve, and how; and herein of the Statute of Labourers, 5 Eliz. c. 4.

Contract of service, and putting an end to.

Most of the matters already noticed as to the contracts of domestic servants, and the putting an end to the same for misconduct or otherwise, will be here applicable.

The contract, if in writing, is exempt from stamp duty, *ante*, 845.

It is said that by the retainer, in pursuance of the Statute of Labourers (5 Eliz. c. 4,) the servant is in service presently by the law, although he cometh not into his master's service in deed: for the retainer is the proper inchoation of the service. (*Bro. Ab. Labourers, pl.* 9, *c.* 11; *Dalt. c.* 58, p. 140.)

Who compellable to serve in husbandry.

By the common law, no one is compellable to serve another. But this is in many respects altered by the following statute (commonly called the Statute of Labourers,) which, however, must be confined to the servants employed in husbandry, and in the trades mentioned in it. (*R.* v. *Inhabitants of Hulcot*, 6 *T. R.* 583.)

5 Eliz. c. 4.

A repeal of so much of former statutes as concerns the hiring, keeping, departing, working, or order of servants, labourers, &c.

By 5 Eliz. c. 4, entitled "An Act (*a*) containing divers Orders for Artificers, Labourers, Servants of Husbandry and Apprentices," reciting that "although there remain and stand in force presently a great number of acts and statutes concerning the retaining, departing, wages and orders of apprentices, servants and labourers, as well in husbandry as in divers other arts, mysteries, and occupations; yet partly for the imperfection and contrariety that is found, and doth appear in sundry of the

(*a*) It is questioned whether or not the proper title of the act is not "An Act *touching*," &c., and not "containing," &c. (*See Rex* v. *Barnett*, 3 *Camp.* 344.)

said laws, and for the variety and number of them, and chiefly for that the wages and allowances limited and rated in many of the said statutes, are in divers places too small and not answerable to this time, respecting the advancement of prices of all things belonging to the said servants and labourers; the said laws cannot conveniently, without the great grief and burden of the poor labourer and hired man, be put in good and due execution: and as the said several acts and statutes were, at the time of the making of them, thought to be very good and beneficial for the commonwealth of this realm (as divers of them are:) so if the substance of as many of the said laws as are meet to be continued, shall be digested and reduced into one sole law and statute, and in the same an uniform order prescribed and limited concerning the wages and other orders for apprentices, servants and labourers, there is good hope that it will come to pass, that the same law (being duly executed) should banish idleness, advance husbandry, and yield unto the hired person, both in the time of scarcity and in the time of plenty, a convenient proportion of wages."

2. *Husbandmen, Labourers, Artificers, &c.*

5 Eliz. c. 4.

And a declaration who shall be compellable to serve in handicrafts and husbandry, and their several duties, &c.

Sect. 2. "That as much of all the estatutes heretofore made, and every branch of them, as touch or concern the hiring, keeping, departing, working, wages, or order of servants, workmen, artificers, apprentices and labourers, or any of them, and the penalties and forfeitures concerning the same, shall be from and after the last day of September next ensuing, repealed and utterly void and of none effect; and that all the said statutes, and every branch thereof, or any matter contained in them, and not repealed by this statute, shall remain and be in full force and effect; anything in this statute to the contrary notwithstanding."

No person shall retain a servant in these sciences under one whole year.

Sect. 3. "No manner of person or persons, after the aforesaid last day of September now next ensuing, shall retain, hire or take into service, or cause to be retained, hired or taken into service, nor any person shall be retained, hired or taken into service, by any means or colour, to work for any less time or term than for one whole year, in any of the sciences, crafts, mysteries or arts of clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, sheremen, dyers, hosiers, tailors, shoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, smiths, farriers, curriers, sadlers, spurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow-head-makers, butchers, cooks, or millers."

What sort of persons are compellable to serve in any of the crafts aforesaid.

Sect. 4. "Every person being unmarried; and every other person being under the age of thirty years, that after the feast of Easter next shall marry, and having been brought up in any of the said arts, crafts, or sciences; or that hath used or exercised any of them by the space of three years or more; and not having lands, tenements, rents or hereditaments, copyhold, or freehold, of an estate of inheritance, or for term of any life or lives, of the clear yearly value of 40*s.*; nor being worth of his own goods the clear value of 10*l.*; and so allowed by two justices of the peace of the county where he hath most commonly inhabited by the space of one whole year, and under their hands and seals, or by the mayor or other head officer of the city, borough or town corporate where such person hath most commonly dwelt by the space of one whole year, and two aldermen, or two other discreet burgesses of the same city, borough, or town corporate, if there be no aldermen, under their hands and seals; nor being retained with any person in husbandry, or in any of the aforesaid arts and sciences, according to this statute; nor lawfully retained in any other art or science; nor being lawfully retained in household, or in any office, with any noblemen, gentlemen or others, according to the laws of this realm; nor have a convenient farm, or other holding in tillage, whereupon he may employ his labour; shall, during the time that he or they shall be so unmarried, or under the said age of thirty years, upon request made by any person using the art or mystery wherein the said person so required hath been exercised (as is aforesaid) be retained; and shall not refuse to serve according to the tenor of this statute, upon the pain and penalty hereafter mentioned."

2. *Husbandmen, Labourers, Artificers, &c.*

[But the 49 Geo. III. c. 109, repeals so much of the above third and fourth sections as relate to clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, sheermen, dyers of wool, or woollen cloth.]

5 Eliz. c. 4.

No person shall put away his servant, nor shall any servant depart from his master before the end of his time.

Sect. 5. "No person which shall retain any servant, shall put away his or her said servant, and that no person retained according to this statute, shall depart from his master, mistress or dame, before the end of his or her term; upon the pain hereafter mentioned; unless it be for some reasonable and sufficient cause or matter to be allowed before two justices of peace, or one at the least, within the said county, or before the mayor or other chief officer of the city, borough or town corporate wherein the said master, mistress or dame inhabiteth, to whom any of the parties grieved shall complain; which said justices or justice, mayor or chief officer, shall have and take upon them or him the hearing and ordering of the matter betwixt the said master or mistress, or dame and servant, according to the equity of the cause."

The cause of putting away servants, or their departing, to be determined by a justice of peace, mayor, bailiff, &c.

No servant shall depart, or be put away, but upon a quarter's warning.

Sect. 6. "No such master, mistress or dame, shall put away any such servant at the end of his term, or that any such servant shall depart from his said master, mistress or dame at the end of his term, without one quarter's warning given before the end of his said term, either by the said master, mistress or dame, or servant, the one to the other, upon the pain hereafter ensuing."

Who compellable to serve in husbandry.

Sect. 7. "Every person between the age of twelve years and the age of sixty years, not being lawfully retained, nor apprentice with any fisherman or mariner haunting the seas; nor being in service with any kidder or carrier of any corn, grain, or meal, for provision of the city of London; nor with any husbandman in husbandry; nor in any city, town corporate, or market-town, in any of the arts or sciences limited or appointed by this estatute to have or take apprentices; nor being retained by the year, or half the year at the least, for the digging, seeking, finding, getting, melting, fining, working, trying, making of any silver, tin, lead, iron, copper, stone, sea-coal, stone-coal, moor-coal, or chark-coal; nor being occupied in or about the making of any glass; nor being a gentleman born; nor being a student or scholar in any of the universities, or in any school; nor having lands, tenements, rents, or hereditaments, for term of life, or of one estate of inheritance of the clear yearly value of 40*s.*; nor being worth in goods and chattels to the value of 10*l.*; nor having a father or mother then living, or other ancestor whose heir apparent he is, then having lands, tenements, or hereditaments of the yearly value of 10*l.* or above, or goods or chattels of the value of 40*l.*; nor being a necessary or convenient officer or servant lawfully retained as is aforesaid; nor having a convenient farm or holding whereupon he may or shall employ his labour; nor being otherwise lawfully retained according to the true meaning of this estatute; shall, after the aforesaid last day of September now next ensuing, by virtue of this estatute, be compelled to be retained to serve in husbandry by the year with any person that keepeth husbandry, and will require any such person so to serve within the same shire where he shall be so required."

Putting away servant within his term, or at the end of term without warning.

Sect. 8. "If any person, after he hath retained any servant (viz. in husbandry, &c. *see ante*, p. 864), shall put away the same servant before the end of his term, unless it be for some reasonable and sufficient cause, to be allowed as is aforesaid, (viz. sect. 5, *supra*); or if any such master, mistress or dame shall put away any such servant at the end of his term, without one quarter's warning given before the said end, as is above remembered; that then every such master, mistress or dame so offending, unless he or they be able to prove by two such sufficient witnesses such reasonable and sufficient cause of putting away of their servant or servants during their term, or a quarter's warning given afore the end of the said term as is aforesaid, before the justices of oyer and terminer, justices of assise, justices of peace in the quarter sessions, or before the mayor or other head officer of any city, borough or town corporate, and two aldermen, or two other discreet burgesses of the same city, borough,

or town corporate, if there be no aldermen, or before the lord president and council established in the marches of Wales, or before the lord president and council for the time being established in the north parts, shall forfeit the sum of 40*s*."

2. *Husbandmen, Labourers, Artificers, &c.*

5 Eliz. c. 4.

Servant not performing his duty.

Sect. 9. "If any servant retained according to the form of this estatute, depart from his master, mistress or dame's service, before the end of his term, unless it be for some reasonable and sufficient cause to be allowed as is aforesaid; or if any servant at the end of his term depart from his said master, mistress or dame's service without one quarter's warning given before the end of his said term, in form aforesaid, and before two lawful witnesses; or if any person or persons compellable and bounden to be retained, and to serve in husbandry, or in any other the arts, sciences, or mysteries above remembered, by the year or otherwise, do (upon request made) refuse to serve for the wages that shall be limited, rated, and appointed, according to the form of this statute; or promise or covenant to serve, and do not serve according to the tenor of the same; that then every servant so departing away, and every person so refusing to serve for such wages, upon complaint thereof made by the master, mistress or dame of the said servant, or by the party to or with whom the said refusal is made, or promise not kept, to two justices of peace of the county, or to the mayor, or other head officer of the city, borough, or town corporate, and two aldermen, or two other discreet burgesses of the same city, borough, or town corporate, if there be no aldermen, where the said master, mistress or dame, or the said party to or with whom the said refusal is made, and promise not kept, dwelleth, or to either of the said lords presidents and council of Wales, and the North, the said justices, lords presidents and councils, and also the said mayors or other head officers, and other persons of cities, boroughs, or towns corporate, or any of them as is aforesaid, shall have power, by force of this statute, to hear and examine the matter, and finding the said servant or the said party so refusing faulty in the premisses, upon such proofs and good matter as to their discretions shall be thought sufficient, to commit him or them to ward, there to remain without bail or mainprize, until the said servant or party so offending shall be bound to the party to whom the offence shall be made, to serve and continue with him for the wages that then shall be limited and appointed according to the tenor and form of this estatute, and to be discharged upon his delivery, without paying any fee to the gaoler where he or they shall be so imprisoned."

Commitment.

None may depart forth of the city, parish, &c., without a testimonial.

Sect. 10. "None of the said (*ante*, p. 864) retained persons in husbandry, or in any the arts or sciences above remembered, after the time of his retainer expired, shall depart forth of one city, town, or parish, to another, nor out of the lath, rape, wapentake, or hundred, nor out of the county or shire where he last served, to serve in any other city, town corporate, lath, rape, wapentake, hundred, shire, or county, unless he have a testimonial under the seal of the said city or town corporate, or of the constable or constables, or other head officer or officers, and of two other honest householders of the city, town, or parish where he last served, declaring his lawful departure, and the name of the shire and place where he dwelled last before his departure, according to the form hereafter expressed in this act; which certificate or testimonial shall be written and delivered unto the said servant, and also registered by the parson, vicar, or curate of the parish where such master, mistress, or dame doth or shall dwell, taking for the doing thereof 2*d*., and not above: and the form thereof shall be as followeth:

Form of testimonial.

Memorandum, that A. B., late servant to C. D., of E., [*husbandman*, or, *taylor*, &c.] *in the county, &c. is licensed to depart from his said master, and is at liberty to serve elsewhere, according to the statute in that case made and provided. In witness whereof, &c. Dated the* [day, month, year, and place, &c. of the making thereof]."

No servant shall be retained with-

Sect. 11. "No person or persons that shall depart out of a service, shall be retained or accepted into any other service, without showing, before his

2. *Husbandmen, Labourers, Artificers, &c.*

5 Eliz. c. 4.

out showing his testimonial.

Master that retaineth a servant without a testimonial to pay 5*l.*

retainer, such testimonial as is above remembered, to the chief officer of the town corporate, and in every other town and place, to the constable, curate, churchwarden, or other head officer of the same, where he shall be retained to serve; upon the pain that every such servant so departing without such certificate or testimonial, shall be imprisoned until he procure a testimonial or certificate; the which if he cannot do within the space of one-and-twenty days next after the first day of his imprisonment, then the said person to be whipped and used as a vagabond according to the laws in such cases provided; and that every person retaining any such servant without showing such testimonial or certificate as is aforesaid, shall forfeit for every such offence 5*l.*: and if any such person shall be taken with any counterfeit or forged memorial, then to be whipped as a vagabond."

By the common law, if a man retained another man's servant, not knowing that he was retained with him, this ignorance excused him of the offence; but now the master may and must take notice whether such servant hath a testimonial or no; otherwise, if he hath no testimonial, such master is liable by the statute to the penalty of 5*l.* (*D. & St.* 256)

How long labourers shall continue at their work.

Sect. 12. "All artificers and labourers, being hired for wages by the day or week, shall, betwixt the midst of the months of March and September, be and continue at their work at or before five of the clock in the morning, and continue at work and not depart until betwixt seven and eight of the clock at night (except it be in the time of breakfast, dinner, or drinking, the which times at the most shall not exceed above two hours and a half, in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep, when he is allowed to sleep, the which is from the midst of May to the midst of August, half an hour at the most, and at every breakfast one half hour): and all the said artificers and labourers, between the midst of September and the midst of March, shall be and continue at their work from the spring of the day in the morning until the night of the same day, except it be in time before appointed for breakfast and dinner; upon pain to lose and forfeit one penny for every hour's absence, to be deducted and defaulked out of his wages that shall so offend."

Artificer or labourer must finish his work.

Sect. 13. "Every artificer and labourer that shall be lawfully retained in and for the building or repairing of any church, house, ship, mill, or every other piece of work taken in great, in task, or in gross, or that shall hereafter take upon him to make or finish any such thing or work, shall continue and not depart from the same, unless it be for not paying of his wages or hire agreed on, or otherwise lawfully taken or appointed to serve the queen's majesty, her heirs, or successors, or for other lawful cause, or without licence of the master or owner of the work, or of him that hath the charge thereof, before the finishing of the said work; upon pain of imprisonment by one month, without bail or mainprize; and the forfeiture of the sum of 5*l.* to the party from whom he shall so depart; for the which the said party may have his action of debt against him that shall so depart, in any of the queen's majesty's courts of record, over and besides such ordinary costs and damages as may or ought to be recovered by the common laws, for or concerning any such offence: in which action no protection, wager of law or essoin shall be admitted."

Punishment for neglect.

Sect. 14. "And that no other artificer or labourer retained in any service, to work with the queen's majesty or any other person, depart from her said majesty or from the said other person, until such time as the work be finished, if the person so retaining the artificer or labourer so long will have him, and pay him his wages or other duties: upon pain of imprisonment of every person so departing, by the space of one month."

Repeal.

[Sections 15 to 20 inclusive, relating to the wages of these labourers and empowering magistrates to fix the amount of them and to set the prices of work, are repealed by the 53 Geo. III. c. 40.]

Artificers compellable to work

Sect. 22. "In the time of hay or corn harvest, the justices of peace, and every of them, and also the constable, or other head officer of every town-

ship upon request, and for the avoiding of the loss of any corn, grain, or hay, shall and may cause all such artificers and persons as be meet to labour, by the discretions of the said justices or constables, or other head officers, or by any of them, to serve by the day for the mowing, reaping, shearing, getting, or inning of corn, grain, and hay, according to the skill and quality of the person; and that none of the said persons shall refuse so to do, upon pain to suffer imprisonment in the stocks by the space of two days and one night: and the constable of the town, or other head officer of the same, where the said refusal shall be made, upon complaint to him made, shall have authority, by virtue hereof, to set the said offender in the stocks for the time aforesaid, and shall punish him accordingly, upon pain to lose and forfeit for not doing thereof the sum of 40*s*."

2. *Husbandmen, Labourers, Artificers, &c.*

5 Eliz. c. 4.

In hay-time and harvest.

Sect. 23. "All persons of the counties where they have accustomed to go into other shires for harvest-work, and having at that time no harvest-work sufficient in the same town or county where he or they dwelt in the winter then last past, bringing with him or them a testimonial, under the hand and seal of one justice of the peace of the shire, or other head officer of the town or place that he or they come from, testifying the same, for the which he shall pay not above one peny* (other than such persons as shall be retained in service, according to the form of this estatute), may repair and resort in harvest of hay or corn, from the counties wherein their dwelling-places are, into any other place or county, for the only mowing, reaping, and getting of hay, corn, or grain, and for the only working of harvest-works, as they might have done before the making of this estatute; any thing herein contained to the contrary notwithstanding."

A proviso for some that go into other shires for work in hay-time and harvest.

* *Sic.*

[By 13 & 14 Car. II. c. 12, s. 3, "That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish, and one of the churchwardens and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise, as the condition of the persons shall require), and is declared an inhabitant or inhabitants there; and, in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases abovesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed; and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return, of his own accord, to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate, where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a publick work-house in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."]

Persons going to work in harvest.

Sect. 24. "Two justices of peace, the mayor or other head officer of any city, borough, or town corporate, and two aldermen, or two other discreet burgesses of the same city, borough, or town corporate, if there be no aldermen, shall and may, by virtue hereof, appoint any such woman as is of the age of twelve years, and under the age of forty years and unmarried, and forth of service, as they shall think meet to serve, to be retained or

Women compellable to serve, when.

2. *Husbandmen, Labourers, Artificers, &c.*

serve by the year, or by the week or day, for such wages, and in such reasonable sort and manner as they shall think meet; and if any such woman shall refuse so to serve, then it shall be lawful for the said justices of peace, mayor, or head officers, to commit such woman to ward, until she shall be bounden to serve as is aforesaid."

5 Eliz. c. 4.

Infants.

An infant of twelve years of age shall be bound by his covenant to serve in husbandry. (2 *F. N. B.* 168.) A woman of such age shall also be bound to serve in husbandry by her covenant. If a man take an infant or other out of another's service, he shall be punished, although the infant or other were not retained. An infant, by his covenant, shall be bound to serve in husbandry, although he may spend 40*s.*, or twelve marks, by the year.

Apprentices.

As to compulsory binding of apprentices, see "*Apprentices*," Vol. I.

The 25 and other sections relating to apprentices are repealed by the 54 Geo. III. c. 96.

Application of penalties.

Sect. 39. "The one half of all forfeitures and penalties, expressed and mentioned in this estatute, other than such as are expressly otherwise appointed, shall be to our sovereign lady the queen's majesty, her heirs and successors, and the other moiety to him or them that shall sue for the same in any of the queen's majesty's courts of record, or before any of the justices of oyer and terminer, or before any other justices, or president and council before remembred, by action of debt, information, bill of complaint, or otherwise; in which actions or suits, no protections, wager of law, or essoin shall be allowed; and that the said justices, or two of them, whereof one to be of the quorum, and the said presidents and council, as is aforesaid, and the said mayors or other head officers of cities or towns corporate, shall have full power and authority to hear and determine all and every offence and offences that shall be committed or done against this estatute, or against any branch thereof, as well upon indictment to be taken before them in the sessions of the peace, as upon information, action of debt, or bill of complaint to be sued or exhibited by any person; and shall and may by virtue hereof make process against the defendant, and award execution, as in any other case they lawfully may by any the laws and statutes of this realm; and shall yearly in Michaelmas Term certify, by estreat, the fines and forfeitures of every the offences contained in this estatute, that shall be found before them, into the court of Exchequer, in like sort and form as they be bound to certify the estreats for other offences and forfeitures to be lost before them; any thing in this statute contained to the contrary notwithstanding." (*See* 1 *Saund.* 312 *b*).

Who may hear and determine offences.

Who shall have the forfeiture in cities and towns corporate.

* *Sic.*

Sect. 45. "All manner* amerciaments, fines, issues, and forfeitures which shall arise, grow, or come by reason of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, shall be levied, gathered, and received by such person or persons of the same city or town corporate, as shall be appointed by the mayor or other head officers mentioned in this said act, to the use and maintenance of the same city or town corporate, in such case and condition as any manner other amerciaments, fines, issues, or forfeitures have been used to be levied and employed within the same city or town corporate, by reason of any grant or charter from the queen's majesty that now is, or of any her grace's noble progenitors, made and granted to the same city, borough, or town corporate; any thing or clause before mentioned and expressed in this act to the contrary notwithstanding."

Labourers, &c., fleeing into another shire.

Sect. 47. "If any servant or apprentice of husbandry, or of any art, science, or occupation aforesaid, unlawfully depart or flee into any other shire, it shall be lawful to the said justices of peace, and to the said mayors, bailiffs, and other head officers of cities and towns corporate, for the time being justices of peace there, to make and grant writs of *capias*, so many, and such as shall be needful, to be directed to the sheriffs of the counties, or to other head officers of the places whither such servants or apprentices shall so depart or flee, to take their bodies, returnable before them at what time shall please them; so that, if they come by such process,

that* they be put in prison till they shall find sufficient surety well and honestly to serve their masters, mistresses or dames, from whom they so departed or fled, according to the order of the law."

2. *Husbandmen, Labourers, Artificers, &c.*

* *Sic.*

2. Colliers or Miners working contrary to their Contracts, and fraudulently stacking Coal, &c.

The following enactment of the 39 & 40 Geo. III. is still in force, and it is therefore thought expedient to insert it; but most of its enactments will be found met by the other statutes noticed in the fourth division of this subject, *post*, 879.

Colliers and others working coal contrary to their agreements; or not fulfilling their contracts.

By 39 & 40 Geo. III. c. 77, s. 3, reciting "it often happens that colliers and miners, disregarding their agreements, wilfully and obstinately work coal and iron stone in a different manner to what they stipulated, or otherwise abandoned the agreement they have entered into, to the great and lasting prejudice of their employers," it is enacted, "That if any person or persons making any bargain, or entering into any contract or agreement in writing, for raising or getting any coal, culm, iron stone, or iron ore, shall wilfully, and to the prejudice of the owner, raise, get, or work, or cause to be raised, got, or worked, any such coal, culm, iron stone, or iron ore, in a different manner to his or their stipulations in respect thereto, and contrary to the directions, and against the will of the owner, or his agent or agents having the care thereof, or shall desist or refuse to fulfil the engagements they have entered into, every person or persons so offending, and being thereof convicted, either by the confession of the party offending, or upon the oath of one or more credible witness or witnesses, before one or more of his majesty's justices of the peace for the county wherein such offence shall have been committed, shall, for every such offence, on complaint of the owner or owners, or his or their agent or agents, and not otherwise, forfeit and pay such sum of money, not exceeding 40*s.*, as to such justice or justices shall seem meet, together with the charges previous to and attending such conviction, to be ascertained by such justice or justices who shall convict the offender or offenders; and upon non-payment thereof, such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed, without bail or mainprize, for any time not exceeding six months, or until the penalty and charges shall be paid; and upon such conviction, every such bargain, contract or agreement shall become void."

Fraudulently walling or stacking coal, iron stone, &c

Sect. 4. "And whereas the owners and lessees of coal, iron stone or iron ore, contracting to get the same raised by weight, are often under the necessity of advancing money to the colliers and miners upon the measure thereof in heaps, at or near the colliery or mine work, before the same can be carried to be weighed, and great frauds are practised in the walling and stacking of such coal, iron stone and iron ore, by which the colliers and miners obtain money beyond what they earn or are able to repay, and miners often defraud each other by conveying away iron stone from one heap into another;" it is therefore enacted, "That if any person or persons shall wall or stack, or cause to be walled or stacked, any coal, iron stone, or iron ore, in any false or fraudulent manner, with an intent to deceive his or their employer or employers, or if any person or persons shall take and remove any iron stone or iron ore, with intent to defraud the person or persons who shall have raised the same, and shall be thereof convicted, either by the confession of the party offending, or upon the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace for the county wherein such offence shall have been committed, it shall and may be lawful for such justice or justices to commit any such person to the house of correction or common gaol for the same county, for any time not exceeding three months."

Application of forfeitures.

Sect. 6. "All and every the forfeitures to be paid in pursuance of this

2. *Husbandmen, Labourers, Artificers, &c.*

act shall be distributed between the informer and the overseer or overseers of the parish or place where the offence shall be committed, for the use of the poor of such parish or place, in such proportion as the justice or justices before whom the offenders shall be convicted shall think fit."

39 & 40 Geo. III. c. 77.

Evidence of inhabitants of the place where the offence is committed shall be good.

Sect. 7. "In all informations and other proceedings for any of the last-mentioned offences, the evidence of the inhabitants of the parish or place where the offence shall be committed, shall be taken and allowed; any law or usage to the contrary notwithstanding."

Convictions shall be drawn up in the following

Sect. 8. "And for the more easy and speedy conviction of offenders against this act, be it further enacted, That all and every the justice or justices of the peace before whom any person or persons shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following words, or in any form of words to the same effect, as the case shall happen; (*videlicet*,)

Form.

Be it remembered, that on the day of in the year of our Lord , A. B. having been brought before me [or, *having been duly summoned, and not having appeared*, as the case may happen] *is on his own confession* [or, *on due proof*, whichever may be the case] *convicted before me, C. D. one of his majesty's justices of the peace for the county of , for that he the said A. B. on the day of at in the said county of did,* [here specify the offence according to the fact, and following the words of the act, and whether the same is the first, or what other offence] *against the form of the statute in that case made; and I do adjudge him to forfeit and pay for the said offence the sum of and also the further sum of for the charges of this conviction. Given under my hand and seal* [or, *our hands and seals*] *the day and year first aforesaid.*"

Prosecutions must be begun within nine months.

Sect. 9. "Provided always, That no person shall be prosecuted for any offence against this act, unless such prosecution be begun within nine calendar months after the offence committed."

Persons aggrieved may appeal to the quarter sessions (except on orders of commitment.)

Sect. 10. "Any person or persons thinking himself or themselves aggrieved by any order or determination of any justice or justices of the peace in pursuance of this act, save and except any order of commitment, may, within three calendar months after such order or determination shall be made, complain to the justices of the peace at the general quarter-sessions to be held in and for the county or place where the cause of appeal shall arise, who shall either hear and determine such complaint at such general quarter-sessions of the peace, or if they think proper may adjourn the hearing thereof to the next general quarter-sessions of the peace to be held for the said county or place, and if they see cause, may quash any conviction, or mitigate any forfeiture or fine, and may award costs to either party, or order any money to be returned which shall have been levied in pursuance of any such order or determination, and shall and may also award such further satisfaction to be made to the party injured as they shall judge reasonable; but no proceedings to be had and taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or process whatsoever, into any of his majesty's courts of record at Westminster or elsewhere; any law or statute to the contrary notwithstanding."

Proceedings not to be quashed for want of form, or removeable into any court of record.

---

3. Complaints before Justices by Servants against Masters.

20 Geo. II. c. 19.

The 20 Geo. II. c. 19, reciting, that the "laws now in being, for the better regulation of servants, and for the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient and defective;" for remedy thereof enacts, "That all complaints, differences, and disputes, which shall happen and arise between masters or mistresses, and servants in husbandry, who shall be hired for one year or longer, [or now by 31 Geo. II. c. 11, s. 3, for less than a year,] or which shall happen or arise between masters and mistresses, and *artificers, handi-*

craftsmen, miners, [extended by 27 Geo. II. c. 6, s. 2, to *tinners* and *miners* in the stannaries,] *colliers, keelmen, pitmen, glassmen, potters,* [and it seems by 10 Geo. IV. c. 52, any persons employed in the manufacture of *hats,* and in the *fustian, iron, leather, fur,* and *hemp* manufactures (*a*)] and *other labourers* [as to the meaning of which term, *see, post,* 875] employed for any certain time, or in any other manner, shall be heard and determined [*see* Form, *post,* No. 6] by one or more justice or justices of the peace of the county, riding, city, liberty, town corporate, or place, where such master or mistress shall inhabit, although no rate or assessment of wages (*b*) has been made that year by the justices of the peace of the shire, riding, or liberty, or by the mayor, bailiffs, or other head officer, where such complaints shall be made, or where such differences or disputes shall arise; which said justice or justices is and are hereby impowered to examine upon oath any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, or any other witness or witnesses, touching any such complaint, difference, or dispute and to make such order [*see* Form, *post,* No. 7] for payment of so much wages to such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer [and by 4 Geo. IV. c. 34, s. 5, *post,* 875, within such period] as to such justice or justices shall seem just and reasonable [or by 4 Geo. IV. c. 34, s. 5, that shall appear due] provided that the sum in question do not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer; and in case of refusal or nonpayment of any sums so ordered, by the space of one-and-twenty days next after such determination, such justice and justices shall and may issue forth his and their warrant [*see* Form, *post,* No. 8] to levy the same by distress and sale of the goods and chattels of such master or mistress, or person employing such artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, rendering the overplus to the owners, after payment of the charges of such distress and sale."

2. *Husbandmen, Labourer, Artificers, &c.*

20 Geo. II. c. 19.

Distress.

By sect. 2, "It shall and may be lawful to and for such justice or justices, upon application or complaint made upon oath, by any master, mistress, or employer, against any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, touching or concerning any misdemeanor, miscarriage, or ill-behaviour, in such his or her service or employment (which oath such justice or justices is and are hereby empowered to administer), to hear, examine, and determine the same; and to punish the offender by commitment to the house of correction, there to remain and be corrected (*c*), and held to hard labour for a reasonable time, not exceeding one calendar month, or otherwise by abating some part of his or her wages, or by discharging such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, from his, her, or their service or employment: and in like manner also it shall and may be lawful to and for such justice or justices, upon any complaint or application, upon oath, by any such servant [*see* Form, *post,* No. 14] artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, against such master, mistress,

Justices may hear master's complaints,

and may punish offender, &c.

May hear servant's complaints,

(*a*) The 10 Geo. IV. c. 52, extends the 4 Geo. IV. c. 34, which is in *pari materia* with this act, to the servants named in the 17 Geo. III. c. 56, and to those above named. The 17 Geo. III. c. 56, also names persons employed in the woollen, linen, cotton, flax, mohair, and silk trades, but as to these the act is repealed by the 6 & 7 Vict. c. 40, *post,* 883.

(*b*) These words imply that the legislature did not contemplate *all* labourers, but those only with reference to whom the justices had power to make a rate of wages, *per Bayley, J.,* in *Branwell* v. *Penneck,* 7 *B. & Cress.* 539, and 1 *M. & R.* 409, *post,* 878. The 53 Geo. III. c. 40, repeals the enactments in the 5 Eliz. c. 4, and 1 Jac. 1, c. 6, as far as the same relates to magistrates assessing and rating labourers' wages.

(*c*) As to the meaning of this, *see, post,* 882.

2. *Husbandmen, Labourers, Artificers, &c.*

or employer, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment of, to, or towards such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, and to summon [*see* Form, *post*, No. 15] such master, mistress, or employer to appear before such justice or justices, at a reasonable time to be prefixed in such summons; and such justice or justices shall and may examine into the matter of such complaint, whether such master, mistress, or employer shall appear or not; proof being made, upon oath, of his or her being duly summoned; and upon proof thereof made, upon oath, to his or their satisfaction, to* discharge [*see* Form, *post*, No. 16] such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or other labourer, of and from his said service and employment; which discharge shall be given under the hand and seal or hands and seals of such justice or justices *gratis*."

20 Geo. II. c. 19.

and discharge the servant.

Sic.

Appeal.

Sect. 5. "If any person or persons shall think himself, herself, or themselves aggrieved by such determination, order, or warrant of such justice or justices as aforesaid (save and except any order or commitment), he, she, or they may appeal to the next general quarter-sessions of the peace to be held for the county, riding, liberty, city, town corporate, or place where such determination or order shall be made; which said next general quarter-sessions is hereby empowered to hear and finally determine the same, and to give and award such costs to any of the respective persons, appellant or respondent, as the said sessions shall judge reasonable, not exceeding 40*s.*; the same to be levied by distress and sale, in manner before mentioned." [But by the 4 Geo. IV. c. 34, s. 5, *post*, 875, the order is final and conclusive, where it is made for the payment in a certain time of the amount of the wages that appear to be due, but it seems not so for any other purpose.]

Costs on.

Certiorari.

Sect. 6. "No writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatsoever, had in pursuance of this act, into any of his majesty's courts of record at Westminster."

Recovery of wages in cases of absence of masters, &c.

By 4 Geo. IV. c. 34, s. 4, after reciting that "it frequently happens that such [*see* sect. 3, *post*, 880,] masters, mistresses, or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas, or at considerable distances from such parishes or places, and during such residence or occasional absences entrust their business to the management and superintendence of stewards, agents, bailiffs, foremen, or managers, whereby such servants, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, or other persons and apprentices, are or may be subjected to great difficulties and hardships, and put to great expense in recovering their wages;" enacts, "That, in either of the said cases, it shall and may be lawful to and for any justice or justices of the county or place where such servant in husbandry, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice shall be employed, upon the complaint of any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice, touching or concerning the non-payment of his or her wages, to summon such steward, agent, bailiff, foreman, or manager, to be and appear before him or them at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer are directed to be heard and determined in and by this and the before-recited acts, [20 Geo. II. c. 19, *ante*, 872; 6 Geo. III. c. 26, *post*, 879; and 4 Geo. IV. c. 19: relative to apprentices, *see* "*Apprentice*," Vol. I.] and also to make an order for the payment by such steward, agent, bailiff, foreman, or manager, to such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice, of so much wages as to such justice or justices shall appear to be justly due; provided that the sum in question do not

exceed the sum of 10*l.*; and in case of refusal or non-payment of any sum so ordered to be paid by such steward, agent, foreman, bailiff, or manager, for the space of twenty-one days from the date of such order, such justice or justices as aforesaid shall and may issue forth his or their warrant to levy the same by distress and sale of the goods and chattels of such master, mistress, or employer, rendering the overplus to the owner or owners, or to such steward, agent, bailiff, foreman, or manager, for the use of such master, mistress, or employer, after payment of the charges of such distress and sale."

2. *Husbandmen, Labourers, Artificers, &c.*

4 Geo. IV. c. 34.

Sect. 5. "Every justice or justices of the peace before whom any complaint shall be made, in pursuance of the said before-recited act made in the twentieth year of the reign of his late majesty king George the second, or of another act made in the thirty-first year of the reign of his said late majesty, intituled 'An Act to amend an Act made in the Third Year of the Reign of King William and Queen Mary, intituled "An Act for the better Explanation and supplying the Defects of the former Laws for the Settlement of the Poor," so far as the same relates to Apprentices gaining a Settlement by Indenture; and also to empower Justices of the Peace to determine Differences between Masters and Mistresses and their Servants in Husbandry, touching their Wages, though such Servants are hired for less Time than a Year,' shall and may order the amount of the wages that shall appear due to any servants in husbandry, artificers, labourers or other person named in the said acts, or either of them, to be paid to the person entitled thereto, within such period as the said justice or justices shall think proper; and in case of refusal or non-payment thereof, shall and may levy the same by distress and sale, in manner directed by the said first mentioned act; and every order or determination of such justice or justices made under this act shall be final and conclusive, any thing in either of the said acts contained to the contrary in any wise notwithstanding."

Justices may order payment of wages that appear due in a certain period.

Order final.

It was formerly supposed, that the words in the statute 20 Geo. II. c. 19, "and other labourers," meant only labourers in any of the enumerated trades; but in the case of *Lowther* v. *the Lord of Radnor and Eyre*, 8 *East*, 113, they received a more enlarged construction, and from this case and from what fell from *Bayley*, J. in *Branwell* v. *Penneck*, 7 *B. & Cres.* 539, it will be found that the above statutes comprehend all workmen in other trades besides those expressly mentioned in them, and whose wages justices of the peace had power, under the stat. of 5 Eliz. c. 4, to assess and rate.

Who are labourers and servants within the acts.

To an action of trespass for taking the plaintiff's goods, the defendants, who were justices of the peace for the county of Wilts, justified under the statute 20 Geo. II.; and, on the trial, a special case was reserved for the opinion of the court of King's Bench. On the 27th of November, 1804, the defendants made this order:—"Wiltshire, to wit. To *T. Lawes*, one of the tithingmen, &c. Whereas *J. Sopp*, of, &c., labourer, hath complained unto *J. T. B.*, one of the justices, &c., that *G. Lowther*, Esq., of, &c., refused to pay unto him, the said *Sopp*, 4*l.* 3*s.* 6*d.* for wages justly due to him for work and labour done by the said *J. Sopp* and by *T. Franklin*, in the service of the said *G. Lowther*, by digging and steaning part of a well at," &c. The order then stated that Mr. *Lowther* was summoned to answer the complaint, but that he did not appear, and that the defendants, as justices, examined, at the time and place appointed, into the complaint, and adjudged it to be true, and ordered Mr. *Lowther* to pay the money to *J. Sopp*. Mr. *Lowther* appealed to the Wiltshire quarter-sessions against this order, where the order was affirmed. After this, the two defendants made a warrant of distress against Mr. *Lowther*, stating all the above facts, under which the plaintiff's goods were taken. The case also stated, that "*steaning a well*" means lining it with stones and mortar. That *Sopp* had, on other occasions, been employed by the plaintiff as a labourer in husbandry. That the work was performed under a contract between the plaintiff and *Sopp*, by which the latter undertook to dig the well of a sufficient depth to

2. *Husbandmen, Labourers, Artificers, &c.*

supply the plaintiff's cattle with water, and for which, when it was deep enough to give a supply of water, he was to receive 2*s.* per foot. That, in the execution of the work, *Sopp* was to employ whom he pleased to assist him, but the money was to be paid to *Sopp* alone. And that *Sopp* had before done other work for the plaintiff, for which he was paid by the piece, and not by the day. *For the plaintiff*, it was contended, 1st, that the justices had no jurisdiction to make the original order; 2ndly, if they had that they exceeded their jurisdiction, by ordering the money, which had been earned by *Sopp* and *Franklin*, to be paid to *Sopp* alone; 3rdly, that the plaintiff was not precluded from bringing his action by having appealed to the sessions. In the course of the argument, the court seemed to think that the second point was answered by the facts of the case, the contract having been made by *Sopp* alone, who was at liberty to employ any one under him: but they gave a decided opinion on the third point, that, if there were no original jurisdiction in the magistrates making the order, the appeal would not give it. On the principal question, however, the court took time to consider of their opinion, which was afterwards delivered by Lord *Ellenborough*, C. J.:—"The question arising on this special case depends on the terms of the complaint made to the magistrates, as recited in the order of the 27th of November 1804; and how far the terms of that complaint bring the complainant within the provisions of the 20 Geo. II. c. 19. This complaint must be taken to be true in the terms of it; no evidence appearing to have been laid before the magistrates to contradict or vary it, and they having adjudged the same to be true. By this it appears that *Sopp* was a labourer; for he is described as '*J. Sopp*, of Shrewton, *labourer*;' and that his demand was for wages due to him for work and labour done by himself and another person, *T. Franklin*; by which must be understood, that *Sopp* was employed to do the work either by the day or the piece, and that *Franklin* assisted *Sopp* in the work, under the retainer of *Sopp*, and not of Mr. *Lowther*; a common practice with labourers, as well in husbandry as in other business. Is *Sopp* then such a labourer as is by the 20 Geo. II. c. 19, subjected to the jurisdiction of the justices of the peace; and, of course, entitled to the benefit of that jurisdiction, to recover his wages, being under 5*l.*, by their summary process? The 20 Geo. II. c. 19, begins by reciting, that 'the laws now in being for the better regulation of servants, and for the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient and defective,' and for remedy enacts, that all complaints, differences, and disputes, which shall happen and arise between masters or mistresses, and servants in husbandry, who shall be hired for one year or longer, or which shall happen or arise between masters and mistresses, and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, employed for any certain time or in any other manner, shall be heard or determined by one or more justice or justices, although no rate or assessment of wages has been made that year by the justices. The 31 Geo. II. c. 11, s. 3, recites the 20 Geo. II. c. 19, and that doubts had arisen whether the words, 'any labourers employed for any certain time, or in any other manner,' extend to servants in husbandry hired for a less time than a year; and, for obviating the said doubts, enacts, that the said act and every clause and matter therein contained shall extend to all servants employed in husbandry, though hired for a less time than a year. In the argument of this case, it was contended that *Sopp* did not come within the meaning of the act of Parliament, 20 Geo. II. c. 19, because he was not a servant in husbandry, nor a servant or labourer in any of the trades, callings, or employments enumerated in that act; and that the words used in the act, '*other labourers employed for any certain time or in any other manner*,' meant labourers in any of the enumerated trades only, and not labourers generally. With the first part of the argument, that he is not to be taken as a servant in husbandry, we agree; because he is not stated to be so in the order or complaint; and we cannot intend anything to give the justices jurisdiction beyond what appears in the order. *R.* v.

The Inhabitants of Hulcott, 6 *T. R.* 583.) But we cannot accede to the latter part of the argument, that the operation of the statute is to be confined to labourers in the several enumerated employments. The most obvious construction is not so to confine it; and no case has been stated where the construction has been so confined. The mischief recited in the preamble of the act is general, viz. that the laws in being for the better regulation of servants, and the payment of wages to them, and to artificers, handicraftsmen, and labourers, are insufficient. The remedy provided by the act is, that all differences between masters or mistresses and servants in husbandry, who shall be hired for a year or longer (these words certainly restrain the operation of the remedy, as to servants, to those in husbandry only, and to such as are hired for a year or longer; the act then proceeds), or (differences) which shall happen or arise between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, *and other labourers* employed for any certain time, or in any other manner. Now, unless these words, 'other labourers,' mean to comprehend a different description of persons from those before particularly mentioned, it is difficult to account for their insertion at all; but applying them to other labourers in any other trade or business, the sense will be perfect, and each word will have its meaning. But it may be said, that if such an extensive construction be put on these last words of the sentence, the former part, specifying certain trades, becomes nugatory. That, however, will not follow; for artificers, handicraftsmen, miners, &c., do not necessarily or properly fall under the denomination of labourers; there being, as I take it, a known distinction between a journeyman in any art, trade or mystery, or other workmen employed in the different branches of it, and a labourer. It does not appear to us to be an objection to this construction, that by other acts of parliament, passed subsequent to the 20 Geo. II., workmen or labourers in other particular trades or manufactures, or labourers generally, are subjected to certain regulations, which appear to clash with some of the provisions of this act; as the 22 Geo. II. c. 27, s. 9, for regulating certain manufactures therein mentioned; and the 6 Geo. III. c. 25, for better regulating apprentices and persons working under contract; and other statutes which may be pointed out. The true answer seems to be, that, at the time of passing one act, the legislature has not always had every other act containing provisions bearing on the same subject brought under its consideration. The act now under our consideration appears to have had for its object the affording to certain servants and workmen, and to labourers in general, a speedy, easy, and cheap mode of recovering their wages, when they amount to a small sum; and to masters an easy method of correcting trifling misdemeanors and ill behaviour in their workmen and labourers. These benefits are by the words of the act extended to servants in husbandry, to workmen in different branches of trade, and to *other labourers* employed for any certain time or in any other manner. The latter words are as general as may be; and we cannot find any reason in law or policy to say that they do not comprehend the case of *Sopp*, as stated in the order of the two magistrates. For these reasons, we are of opinion, on the questions submitted to us by the special case, that the justices making the original order had jurisdiction to make that order; and of course that the quarter-sessions had jurisdiction to make the order on the appeal." And judgment was given for the defendants.

2. *Husbandmen, Labourers, Artificers, &c.*

Statutes not confined to labourers in enumerated employments.

Domestic servants are not within the enactments. (*See Kitchen v. Shaw*, 6 *Ad. & Ell.* 729, 1 *Nev. & P.* 791, *S. C.*)

Domestics.

The acts extend only to cases where the relation of *master* and *servant* exclusively exists. They do not extend therefore to any case where work is done under a contract for a sum certain, or when the hours of work are entirely left in the discretion of the contracting party; and therefore, where A. had contracted with B. to build a wall for a certain price, within a certain time, and having performed a part of the work, refused to complete it, this was held not to be within the 4 Geo. IV. c. 34, s. 3, *post*, 880;

The relation of master and servant must exclusively exist.

2. *Husbandmen, Labourers, Artificers, &c.*

and that a magistrate, who acted upon the complaint of B. and convicted and committed A. to prison, was liable to an action for false imprisonment. (*Lancaster* v. *Greaves*, 9 *B. & C.* 628.) And this relationship of master and servant, and the nature of the service, should distinctly appear on the face of the justices' order. (*Wiles* v. *Cooper*, 1 *H. & W.* 560; 3 *Ad. & Ell.* 524; 5 *N. & M.* 276, *S. C.*; *R.* v. *Lewis*, 13 *Law J., N. S., M. C.* 46.)

And where a party agreed with a manufacturer "to print certain pieces of woollen cotton goods," he was held not a servant within that enactment. (*Ex parte Johnson*, 7 *Dowl.* 702; 9 *Law J., N. S.* 27, *M. C., S. C.*) And the same where a silk weaver agreed with a manufacturer to weave for him certain pieces of silks at certain prices, agreed on between them. (*Hardy* v. *Ryle*, 9 *B. & C.* 603.)

And in another case it was held that a person whose name is added to that of the regular officer in a warrant, under a *fi. fa.*, by the plaintiff's attorney, and who is employed to watch the goods after they have been taken by the officer, is not a labourer within the 20 Geo. II. c. 19; (*Brauwell* v. *Perneck*, 1 *M. & R.* 409; 1 *M. & R. M. C.* 109; 7 *B. & C.* 536, *S. C.*;) and *Bayley*, J., delivered his judgment in that case as follows "I am of opinion that the magistrate had not any jurisdiction to make the order for payment of wages to *Richards*; for it seems to me that *Richards* was not that sort of labourer, nor the service rendered by him that sort of labour, which is mentioned and intended in the 20 Geo. II. c. 19. That statute recites, that the existing laws for payment of wages to servants, and to artificers, handicraftsmen, and labourers, were defective, and then provides a mode of settling disputes between masters and certain descriptions of persons and other labourers, *although no rate or assessment of wages has been made that year by the justices of the peace for the shire*, &c. where such complaint shall be made, or such dispute arise. Those words imply, that the legislature did not contemplate all labourers, but those only with reference to whom the justices had power to make a rate of wages. Now, looking at the statute 5 Eliz. c. 4, the justices are thereby empowered to settle the rate of wages 'of such artificers, handicraftsmen, husbandmen, or other labourers, servants, or workmen, whose wages had in time past been fixed by law, and also of all other labourers, artificers, workmen, or apprentices *of husbandry*, whose wages had not been fixed; and these wages are to be fixed by the year, day, week, or month, and what wages every workman or labourer shall take by the great, for mowing, reaping, or threshing of corn, or for mowing or making of hay, or for ditching, paving, &c., and for any other kind of reasonable labour and service.' This latter part shows that the legislature had principally in view out-door work or country labour. And the statute appears to have received this construction; for by the 1 Jac. I. c. 6, after reciting that questions had arisen, whether the former act gave any new jurisdiction except as to persons that worked in husbandry, it was enacted, 'that the provisions should extend to any labourers, weavers, spinsters, and workmen whatsoever, either working by the day, week, month, or year, or taking any work to be done in great or otherwise.' That explains still further the various descriptions of persons whose wages might be fixed by the magistrates at the time when the 20 Geo. II. passed; and for the work to be done by the several persons mentioned, there would be no difficulty in fixing a rate of payment. In *Lowther* v. *Lord Radnor*, the work done was digging, the workman was clearly *a labourer*, and within the statute. In the present case, there was no work or labour done by *Richards*; his was not an employment for which it could be expected that magistrates could fix the proper remuneration. For these reasons, I think that the defendant went beyond his jurisdiction in making the order in question, and that the rule for a new trial must be discharged. It appears to me that there is weight also in the argument derived from the second section of the 20 Geo. II. c. 19; for this was not a case in which it could be intended that the magistrate should interfere in the manner pointed out by the statute"

2. *Husbandmen, Labourers, Artificers, &c.*

In *R.* v. *Heywood and another*, (1 *M. & Sel.* 624,) it was determined that the sect. 5 of the now repealed 13 Geo. I. c. 23, for settling "disputes between clothiers or makers of woollen goods, and weavers, or persons employed in such manufactures," did not relate to demands against clothiers by the owner of a scribbling and carding-mill, for work done by him for the clothiers, in teasing, scribbling, carding, and stubbing the wool at his mill: therefore, the court refused a *mandamus* to two justices to hear and examine such demands. Ld. *Ellenborough*, C. J., said, "the penal provisions of this statute shew that it is not applicable to the adjustment of debts between parties of equal rank in trade. 'Wages,' is the emphatical word denominating the character of the person who is authorized to apply, and all the words seem to express the relation between master and servant."

Who an employer.

As to who is an "employer," within the 4 Geo. IV. c. 34, *see post*. 881.

The order and warrant of distress.

The order and warrant of distress of justices made on the complaint, must on the face of them respectively show that they have jurisdiction to make them. It must, amongst other requisites, appear that a relationship of master and servant within the meaning of the above enactments existed. (*Ante*, 878.) It must also appear, that the master or steward, &c. in case the order be against him, inhabits within the jurisdiction of the justices. (*See Johnson* v. *Reid*, 6 *M. & Wels.* 124, *post*, 882.) If the order and warrant on the face of them, show that the justices have jurisdiction, they will be protected by them from any action for any act done under the latter. (*See Wilson* v. *Weller*, 1 *B. & B.* 57; 3 *Moore*, 294; 8 *Taunt.* 521, *S. C.*; *and see further, title*, "*Order*," Vol. V.; *and title*, "*Distress under Justice's Warrant*," Vol. II.)

No power to commit of master.

Magistrates have no power under the above acts, or under the 5 Geo. IV. c. 18, to imprison a master in case of there being no sufficient distress. (*Wiles* v. *Cooper*, 1 *H. & W.* 560; 3 *Ad. & Ell.* 524; 5 *N. & M.* 276, *S. C.*)

Appeal.

As to appealing against the order, *see ante*, 874, and *see*, as to an appeal against an order on the complaint of the master, *post*, 882.

---

4. Complaints before Justices, by Masters against their Servants, &c.

Complaints by masters against servants for misconduct.

We have seen that by the 20 Geo. II. c. 19, s. 1, *ante*, 872, a justice of the county, &c., where the master or employer resides, upon application or complaint [*see* Form, *post*, No. 9] made upon oath by any master or employer against any of the servants or labourers within the meaning of that act, concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service or employment, may hear, examine, and determine the same, and punish the offender by commitment [*see* Form, *post*, No. 11] to the house of correction, there to remain, and be corrected, and held to hard labour for a reasonable time not exceeding one calendar month, or otherwise by abating some part of his wages, or by discharging such servant or labourer from his service or employment.

Artificers and labourers, &c., not fulfilling their contract, or guilty of misconduct, &c.

By 6 Geo. III. c. 25, s. 4, reciting, that "it frequently happens that artificers, calico-printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, and others, who contract with persons for certain terms, do leave their respective services before the terms of their contracts are fulfilled; to the great disappointment and loss of the persons with whom they so contract:" for remedy thereof enacts, "That from and after the said twenty-fourth day of June, 1766, if any *artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer*, or *other person*, shall contract with any person whomsoever for any time or times whatsoever, and shall absent himself from his service before the term of his contract shall be completed, or be guilty of any other misdemeanor, that then, and in every such case, it shall and may be lawful for any justice of the peace of the county or place where any such artificer, calico-printer, handicraftsman, miner, collier, keelman,

2. *Husbandmen, Labourers, Artificers, &c.*

6 Geo. III. c. 25.

pitman, glassman, potter, labourer, or other person, shall be found, and such justice is hereby authorized and empowered, upon complaint thereof made upon oath to him by the person with whom such artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall have so contracted, or by his or her steward or agent, which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall not have fulfilled such contract, or hath been guilty of any misdemeanor, it shall and may be lawful for such justice to commit (*a*) every such person to the house of correction for the county or place where such justices * shall reside, for any time not exceeding three months, nor less than one month."

May be committed to prison.

* *Sic.*

Appeal.

Sect. 5. "If any person shall think himself aggrieved by such determination, order, or warrant, of any justice of the peace as aforesaid, except an order of commitment, every such person may appeal to the next general quarter-sessions of the peace to be held for the county or place where such determination or order shall be made; such person giving six days' notice of his intention of bringing such appeal, and of the cause and matter thereof, to such justice of the peace and the parties concerned, and entering into a recognizance within three days after such notice, before some justice of the peace for such county or place, with sufficient surety, conditioned to try such appeal at, and abide the order or judgment of, and pay such costs as shall be awarded by, the justices at such quarter-sessions; which said justices, at their said sessions, upon due proof of such notice being given, and of entering into such recognizances as aforesaid, shall and are hereby directed to proceed in, hear, and determine, the causes and matters of all such appeals; and shall give such relief and costs to the parties appealing or appealed against, as they, in their discretion, shall judge proper and reasonable; and their judgments and orders therein shall be final and conclusive to all parties concerned." (*See*, as to when the appeal will not lie, *post*, 882.)

Costs.

Stannaries and London.

Sect. 6. "Nothing in this act contained shall extend to the stannaries in the counties of Devon and Cornwall, or to impeach or lessen the jurisdiction of the chamberlain of the City of London, or of any other court within the said city, touching apprentices."

Proceedings, however, are rarely taken under this act of 6 Geo. III. The following act of 4 Geo. IV. c. 34, giving justices more extensive jurisdiction than that act.

Husbandmen, artificers, labourers, &c., not fulfilling contracts, &c., or guilty of misconduct, &c.

The 4 Geo. IV. c. 34, after reciting, in s. 1, the 20 Geo. II. c. 19, and the 6 Geo. III. c. 25, by sect. 3, enacts, "That if any *servant in husbandry* or *any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer*, or *other person*," [extended by 10 Geo. IV. c. 52, to the servants named in the 17 Geo. III. c. 56, viz., persons employed in the manufacture of hats, and in the fustian, iron, leather, fur, and hemp manufactures, (*b*)] shall contract with any person or persons whomsoever, to serve him, her, or them, for any time or times whatsoever, or in any other manner or shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting *parties*), or having entered into such service shall absent himself or herself from his or her service before the term of his or her contract (whether such contract shall be in writing or not in writing) shall be completed, or neglect to fulfil the same, or be guilty of any other

(*a*) It will be observed that this act does not authorize the discharge of the servant.

(*b*) The 6 & 7 Vict. c. 40, repeals the 17 Geo. III. c. 56, as to persons employed in the woollen, linen, cotton, flax, mohair, and silk trades. *See post*, 883.

misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, then and in every such case it shall and may be lawful for any justice of the peace of the county or place where such servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall have so contracted, or be employed or be found, and such justice is hereby authorized and empowered, upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person shall have so contracted, or by his, her, or their steward, manager, or agent, which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor as aforesaid, it shall and may be lawful for such justice to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months, and to abate a proportionable part of his or her wages, for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof, to punish the offender by abating the whole or any part of his or her wages, or to discharge such servant in husbandry, artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person from his or her contract, service, or employment, which discharge shall be given under the hand and seal of such justice *gratis*."

2. *Husbandmen, Labourers, Artificers, &c.*

4 Geo. IV. c. 34.

Justice may commit to prison.

Or abate wages, or discharge servant.

The observations made *ante*, 875 to 877, as to what kind of relationship of master and servant should exist, and what description of servants are within the meaning of the 4th section of the above act of 4 Geo. IV. and within the 1 & 2 sections of the 20 Geo. II., are here applicable.

What servants and labourers, &c. within the act.

The employer is the person on whose farm the employment is, and not the bailiff, though the contract of hiring may have been made personally with the bailiff. (*R.* v. *Hoseason*, 14 *East*, 605.) The defendant, a magistrate, having heard a complaint referred to him in his judicial character by the bailiff of his own farm against one *G. Battersby*, a labourer in husbandry, who had been employed upon the farm by the bailiff, and was charged by him for misconduct in his business and refusal to perform his work, had sentenced *Battersby* to be committed to the house of correction, there "*to be corrected*, and kept to hard labour for *one calendar month*," whereupon a criminal information was moved for against the defendant, grounded upon special circumstances of alleged misconduct, as well in respect of the general complexion of the case, as having been guilty of particular oppression in giving that judgment. In the course of the discussion, a question arose, whether, if the defendant committed *Battersby* to the house of correction at all, he was not bound to sentence him also *to be there corrected*, by which was understood to be corporally corrected by whipping, as had, in fact, been done. The court, upon consideration of the two statutes of 20 Geo. II. and 6 Geo. III., were of opinion, that if the commitment in question (which was for *one calendar month*) were intended by the magistrate to be made under the 20 Geo. II., the correction thereby directed (by which they understood corporal punishment by whipping, and which they considered the sentence in question to import by the commitment to the house of correction, there to be corrected) was a necessary part of the judgment. But that, under the latter statute, which enabled the justice to commit the offender to the house of correction for any time not exceeding three months, nor less than one month, bodily correction was no part of the sentence; and they thought that the punishment inflicted by the two acts could not be blended together, as

Who the employer within the acts.

2. *Husbandmen, Labourers, Artificers, &c.*

they appeared to be by the precedent in *Burn's Justice*, which they said was incorrect in that respect. But though the court thought that the sentence pronounced by the defendant in this case was legal in the form of it under the 20 Geo. II., yet Lord *Ellenborough*, C. J., in delivering their opinion upon that point, strongly expressed his disapprobation of the conduct of the defendant for sitting in judgment as a magistrate upon the imputed misconduct of his own labourer, of which he himself was to be considered as the complainant, though in form the complaint was preferred by his bailiff. It was impossible, he observed, to consider the defendant's bailiff as the *employer* of the labourer upon the defendant's own farm, with the sense of that word in the act, though the contract of hiring was made personally by the bailiff; and that it was a most abusive interpretation of the law for a man to erect himself as a criminal judge over the servants on his own farm for an offence against himself. However, as the defendant appeared, from the circumstances of the whole case, to have acted in this respect from an error of judgment, rather than from any bad motive; and in the mode of punishment adopted by him, which had been urged in aggravation, as evincing a vindictive motive, was probably misled by the erroneous precedent in *Burn's Justice*, which appeared to leave him no discretion in ordering corporal punishment; the court finally discharged the rule upon the defendant's payment of all the costs of the application.

Upon comparing the two statutes, viz. 20 Geo. II. c. 19, and 6 Geo. III. c. 25, there appears to be a distinction as to the applicants. In the former act, it is to be on application *by any master, mistress, or employer;* by the latter act, the complaint is to be made by "*the person with whom the labourer shall have contracted, or by his steward or agent:*" and perhaps the punishment which may be legally affixed, may depend upon the station which the applicant may hold. and it also seems that the words *guilty of any misdemeanor*, in the 6 Geo. III. c. 25, are much more general than the words "any *misdemeanor* IN HIS SERVICE," in the 20 Geo. II. c. 19

Conviction and commitment.

The conviction and commitment must not only show that the complaint was on oath, but also that the examination was so. They must also show the nature of the employment of the servant, as well as that he was employed. (*R.* v. *Lewis*, 13 *Law J., N. S., M. C.* 46.) The commitment must state that the party has been convicted: setting forth that he was charged on oath with the offence is not sufficient. (*R.* v. *Cooper*, 6 *T. R.* 509; *and see Massey* v. *Johnson*, 12 *East*, 78; *R.* v. *Justices of Staffordshire*, 12 *East*, 575.) In the case of *R.* v. *Rhodes*, (4 *T. Rep.* 220,) it was objected that the commitment did not include a conviction, but only stated that the offender was charged before the justice with being a rogue and vagabond; and it did not proceed, as it ought to have done, to adjudge the defendant to be guilty of the offence charged; and it was held bad. (*See also*, "*Commitment in Execution*," Vol. I.)

The commitment as well as the conviction must show, either that the contract was entered into, or the work refused to be done, or the servant found, within the jurisdiction of the magistrate. (*Johnson* v. *Reid*, 6 *Mee. & W.* 124.)

Correction.

Where the conviction adjudged that the servant should be imprisoned in the house of correction, there to remain and to be held to hard labour for one month: the commitment required the keeper to receive him into custody, there to remain and be corrected and held to hard labour for one month, (following the words of the 20 Geo. II. c. 19, s. 2):—It was held, that the "correction" therein mentioned must be understood to mean something beyond the hard labour, and therefore that the commitment was bad, as varying in this respect from the conviction, and authorizing a punishment not warranted by the statute. (*Wood* v. *Fenwick*, 10 *Mee. & W.* 195.)

The correction contemplated by the 20 Geo. II. c. 19, s. 2, is corporal punishment by whipping. (*See R.* v. *Hoseason*, *supra.*) The whipping of females is abolished, *see* "*Whipping*," Vol. VI.

Appeal against commitment.

No appeal lies to the sessions against a record of conviction and commitment under the 6 Geo. III. c. 25, (*ante*, 879,) for three months, of a collier

for absenting himself from his master's service. (*R.* v. *The Justices of Staffordshire*, 12 *East*, 572.) Lord *Ellenborough*, C. J., there said, "It is not for us to say whether it may be convenient and proper to provide a remedy by appeal for a party grieved by a commitment in execution under this act; we can only declare what the legislature have said in this case; and when by excepting an order of commitment out of the appeal clause, they have said that there shall be no appeal against such an order, and when the commitment must for this purpose be taken to be one and the same thing with the conviction, we have no discretion left to exercise upon the subject, and it does not become us to scan the wisdom of the provision which the legislature have enacted."

3. *Workmen in Cotton, Flax, &c. Manufactures.*

As to how far the magistrate's order and commitment will protect him, *see ante*, 879.

III. Workmen in the Cotton, Flax, Fustian, Hosiery, Linen, Mohair, Silk, Woollen, and Worsted Manufactures.

By 6 & 7 Vict. c. 40, entitled, "An Act to amend the Laws for the Prevention of Frauds and Abuses by Persons employed in the Woollen, Worsted, Linen, Cotton, Flax, Mohair, and Silk Hosiery Manufactures; and for the further securing the Property of the Manufacturers and the Wages of the Workmen engaged therein, [1st August, 1843,] reciting the passing of the 8 & 9 Will. III. c. 36, "whereby (amongst other matters therein contained) certain penalties, forfeitures, and punishments therein referred to were imposed upon persons embezzling or otherwise unlawfully selling or receiving, as therein is mentioned, silk delivered by the silk manufacturers to be worked up:" and the passing of the 1 Ann. stat. 2, c. 18, made perpetual by the 9 Ann. c. 30; and the passing of the 12 Geo. I. c. 34, 18 Geo. II. c. 8, 22 Geo. II. c. 27, 17 Geo. III. c. 56, and 32 Geo. III. c. 44; "and that the provisions of the said acts have not been effectual to prevent frauds, embezzlements, and abuses by persons employed in the woollen, linen, cotton, flax, mohair, and silk hosiery manufactures; and it is expedient to repeal so much of the said recited acts as relates to the said manufactures, and to make further provisions in lieu thereof, as well for the benefit and encouragement of trade and manufactures as for the security of the property of manufacturers and the wages of the workmen engaged in the said manufactures:" it is enacted, "That from and after the commencement of this act so much of the said recited acts or any of them as relates to the *woollen, linen, cotton, flax, mohair*, and *silk* manufactures, or any of them, or any manufactures whatsoever made of *wool, cotton, flax, mohair*, or *silk* materials, whether the same be or be not mixed with each other or with any other materials, shall, so far as respects the manufactures, trades, occupations, and employments hereinafter mentioned, be and the same are hereby repealed, save and except so far as the same may have repealed any former acts or enactments."

6 & 7 Vict. c. 40, repeals prior acts as to.

Sect. 2. "That if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials, for the purpose of being prepared, worked up, or manufactured, (*see* sect. 34, *post*, 893, as to what trades the act extends to,) either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange, or otherwise fraudulently dispose of the same materials, tools, or apparatus, or any part thereof, he shall, upon being thereof lawfully convicted by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, before two or more justices of the peace, forfeit the full value of the same,

Penalty for pawning or embezzling materials.

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Distress for.

Commitment.

and also forfeit such penalty, not exceeding 10*l.*, together with costs, as to the said justices shall seem meet; and every such forfeiture and penalty shall be applied, under the direction of the convicting justices, in manner following; (that is to say,) in the first place, in making such satisfaction to the party injured as the said justices shall think proper; and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this act; and in default of payment of such forfeiture and penalty, with costs, immediately on conviction, or within such period as the justices so convicting may direct, the said justices may issue their warrant to distrain and sell the goods and chattels of the person so convicted, for the amount thereof, and costs; and the proceeds of any distress, after paying the penalty, forfeiture, and costs, and also the costs of such distress, shall be paid over to the person convicted; but if no sufficient distress shall appear or shall be found whereon to levy the said penalty, forfeiture, and costs, the said justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be there imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding three calendar months, unless the amount of such forfeiture and penalty, with costs, or so much thereof as shall not have been paid previously to the commencement of such imprisonment, be sooner paid."

Penalty for neglecting to return materials.

Sect. 3. "That if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or with any tools or apparatus for manufacturing the said materials, shall neglect or delay to return the said materials, tools, or apparatus, or any part thereof, for the space of fourteen clear days after being required so to do by the party intrusting him therewith, or by some person on his behalf, by notice in writing to be served upon or left at the last or usual place of abode or business of such person (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought), then and in every such case all, or so much or so many of the said materials, tools, or apparatus as shall not be returned to the person so intrusting him therewith within the time aforesaid, shall be deemed to be embezzled by the person so neglecting or delaying to return the same; and the person so neglecting or delaying to return the same shall for every such offence be liable to be proceeded against for embezzlement, in the same manner, and subject to the same forfeiture and penalty, with costs, and to be applied in the same manner, as are respectively hereinbefore prescribed and imposed in respect to persons selling, pawning, purloining, embezzling, secreting, exchanging, or otherwise fraudulently disposing of the said materials."

Purchasing or receiving embezzled materials or tools, a misdemeanor, &c.

Sect. 4 "That any person who shall purchase or take in pawn, or who in any other way shall receive into his premises or possession, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, and whether the same or any part of the said materials be or be not wholly or partially wrought, made up, or manufactured into merchantable wares, or any tools or apparatus for manufacturing the same, knowing that such materials, tools, or apparatus are purloined or embezzled or fraudulently disposed of, or that the person from whom he shall purchase, take in pawn, or receive the same is fraudulently or unlawfully disposing thereof, or knowing such person to be employed or intrusted by any other person or persons to work up either by himself or by or with others the materials so purchased, taken in pawn, or received for any other person or persons, and not having first obtained the consent of the person or persons so employing or intrusting him therewith, shall, on conviction by the oath

of the owner or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Selling, &c. embezzled materials or tools, a misdemeanor, &c.

Sect. 5. "That if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise dispose of, any such materials, tools, or apparatus as aforesaid, knowing the same to have been so purloined or embezzled or received from persons fraudulently disposing thereof as aforesaid, he shall, on conviction by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned."

Justices may issue warrant for apprehension of offenders, and commit them for trial.

Sect. 6. "That on proof on oath that there is just cause to suspect that any such materials, tools, or apparatus as aforesaid have been fraudulently sold, pawned, pledged, purloined, or embezzled by the person to whom the same were intrusted, or that any such materials, tools, or apparatus have been purchased or received, or sold, pawned, pledged, exchanged, or otherwise unlawfully disposed of, or offered for sale, pawn, pledge, exchange, or other disposal, by any person knowing the same to have been purloined or embezzled or received from some person fraudulently disposing thereof, it shall and may be lawful for any one justice of the peace and such justice is hereby required to issue his warrant for apprehending any such person, and bringing him before him or some other justice of the peace for examination; and if upon such examination the charge of having fraudulently sold, pawned, purloined, embezzled, or otherwise fraudulently disposed of any such materials, tools, or apparatus, or of having purchased or received, or sold, pawned, pledged, exchanged, or otherwise fraudulently disposed of, or of having offered for sale, pawn, pledge, exchange, or other disposal, any such materials, tools, or apparatus, knowing them to have been purloined or embezzled or received from some person fraudulently disposing thereof, shall be supported by evidence to raise a strong presumption of guilt, such justice shall commit such person to the common gaol or house of correction, in order that he may be brought forward for trial at the next petty sessions, unless he enter into such bail, with two sufficient sureties, as may be required for his appearance before such court on any day to be fixed by such justice."

Workmen neglecting to fulfil their engagements, not finishing their work, or leaving without notice.

Sect. 7. "That if any person intrusted, employed, or contracting to prepare, work up, or manufacture, or to have prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed by or under him, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, shall not prepare, work up, or manufacture, or cause to be prepared, worked up, or manufactured, the said materials, and return the same, within seven clear days after the time which shall have been agreed upon between such person and the owner of the said materials, or other the person intrusting him therewith, and in case no such time shall have been so agreed upon then within seven clear days after being required so to do (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought), or shall leave or return such materials without having performed as he could and ought to have done the work he was employed to perform thereon or thereto, and without the consent of the person intrusting him with such materials as aforesaid, or shall damage the same, or if any person shall contract or engage to work, or be employed to do or perform, or to have done or performed any work, in any of the said manufactures, or connected therewith or incidental thereto, or any parts, branches, or processes thereof, either by himself or by any person or persons to be employed by or under him, and whether such contract or engagement shall be to work or be employed for any person exclusively, or for all or part of his time, or for specific work, or otherwise, and whether such person is to be paid according to the value or amount of the work done, the time employed, or in any other manner whatsoever, and

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

shall neglect to fulfil such contract or engagement, or absent himself from such work or employment before such notice (if any) as shall have been agreed upon between the said parties for determining the said contract or engagement shall have expired, or without giving such notice, or contrary to the terms of such contract or engagement (unless prevented as aforesaid), to be allowed as aforesaid, then and in every such case such person, being thereof lawfully convicted on oath before two or more justices of the peace, shall forfeit any sum not exceeding 2*l.* as to such justices shall seem meet, and also, in case the said materials shall be damaged, the amount of the injury done thereto, to be ascertained by the said justices, together with costs; and every such forfeiture shall be applied, under the direction of the justices so convicting, in manner following; (that is to say,) in the first place, in making such satisfaction to the party injured as the said justices shall think proper, and the remainder, if any, shall be applied in the same manner as any penalty under this act; and in default of payment of such forfeiture and costs immediately on conviction, or within such period as the justices so convicting shall direct, the said justices may either immediately or at any time after such conviction commit any person so convicted to the common gaol or house of correction, there to be imprisoned with or without hard labour, as to the said justices shall seem meet, for any term not exceeding two calendar months, unless the amount of such forfeiture and costs be sooner paid."

Penalty.

Justice empowered to grant search warrants.

Sect. 8. "That upon proof on oath before a justice of the peace that there is reasonable cause to suspect that any person has in his possession or on his premises any such materials, tools, or apparatus as aforesaid, which have been purloined, embezzled, or otherwise fraudulently disposed of, it shall be lawful for the said justice and such justice is hereby required to grant his warrant to search the dwelling-house and premises of such person, and if any such property shall be found therein to cause such materials, tools, or apparatus, and the person in whose possession or on whose premises the same shall be found, to be brought before him or some other justice of the peace, to be dealt with in the same manner as any person brought before a justice under the enactment next hereinafter contained."

Peace officers to apprehend suspected persons.

Sect. 9. "That every peace officer and constable and every watchman duly appointed by law, during such time as he shall be on duty, shall and may apprehend or cause to be apprehended any person whom he may reasonably suspect of having, or carrying or in any way conveying, at any time after sun-setting and before sun-rising, any such materials, tools, or apparatus as aforesaid, suspected to be purloined, embezzled, or otherwise fraudulently disposed of, and shall lodge such person, together with the property, in a police office or other place of security, in order that he may be brought before a justice of the peace so soon as convenient, who is hereby empowered to discharge such person, or to order his detention until the next court of petty sessions, unless he enter into such bail, with two sufficient sureties, as may be required, for his appearance before such court on any day to be fixed by the said justice; and if the person so apprehended in the act of committing any such offence as aforesaid, or of conveying any such property as last aforesaid, shall not produce before the said court the person duly entitled to dispose of such property from whom he bought or received the same, or shall not give an account to the satisfaction of the said court that the property is honestly come by, then the person so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given as to whom such property belongs."

Persons apprehended, and not proving that the property is honestly come by, to be punishable.

Adjournment of time for trial allowed, on prisoner finding bail.

Sect. 10. "That it shall be competent for the party accused, in all proceedings brought under authority of this act, to move for and obtain an adjournment of the time fixed for trial for such a reasonable time as may appear to the court to be necessary for the party accused to produce the person duly entitled to sell or dispose of the said property of whom he bought or received the same, or evidence respecting the same; but the party accused, and requesting such adjournment, shall be detained in

custody or committed to prison, unless he enter into such bail, with two sufficient sureties, as shall be required for his appearance before such court at such time and place as shall be appointed."

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Punishment of persons convicted of misdemeanor.

Sect. 11. "That any person who shall be deemed and adjudged guilty of a misdemeanor, agreeably to any of the provisions of this act, shall, in addition to being deprived without compensation of any such materials, tools, and apparatus which have been purloined, embezzled, or otherwise fraudulently disposed of, and which shall have been found in his possession, forfeit any sum not exceeding 20*l.* for each offence, together with costs, upon being thereof lawfully convicted by the oath of one or more credible witness or witnesses, before two or more justices of the peace; and every such forfeiture shall be applied, under the direction of the justices so convicting, in manner following; (that is to say,) in the first place, in making such satisfaction to the party injured as the said justices shall think fit, and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this act; and in default of payment of such forfeiture and penalty, with costs, immediately on conviction, or within such period as the court shall direct, any justice or justices may issue his or their warrant to distrain and sell the goods and chattels of the person so convicted, for the amount thereof, and costs; and the proceeds of any distress, after paying the forfeiture and costs, and also the costs of such distress, shall be paid over to the person convicted; but if no sufficient distress shall appear or shall be found whereon to levy the said forfeiture and costs, any justice or justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be imprisoned there, with or without hard labour, as to the said court shall seem meet, for any term not exceeding four calendar months, unless the amount of such forfeiture and costs, or so much thereof as shall not have been paid previously to the commencement of such imprisonment, be sooner paid."

Disposal of unclaimed property which has been seized.

Sect. 12. "That where no proof shall be given at the time of conviction of the ownership of property found in the possession of a person convicted under this act, the justices or court shall cause the property so found to be deposited in some safe place for any time not exceeding thirty days, and shall, if the property be of sufficient value to pay the expenses thereof, order an advertisement to be inserted in one or more of the public newspapers of the town or city where, or nearest the place where, the same was found, and by fixing a notice on some public place describing such property, and where the same may be inspected, or in case of the said property not being of sufficient value to pay the said expenses, then by fixing such notice as aforesaid only; and in case any person shall prove his own or his employer's ownership or property therein upon oath to the satisfaction of a justice, restitution of such property shall be ordered to the owner thereof, after paying the reasonable cost of removing, depositing, advertising, and giving notice of the same; but if no ownership be proved to such property the justice shall, at the termination of thirty days, order such property to be sold, and after deducting the charges aforesaid, with the charges of sale, shall order the residue to be applied in the same manner as is hereafter directed for the disposal of any other penalty under this act."

Owner of materials may inspect shops, &c. of persons employed.

Sect. 13. "That it shall be lawful for the owner of any such materials as aforesaid, or any other person duly authorized by him, or other the person who shall have so intrusted such materials, from time to time, as occasion shall require, to demand leave of entrance and enter at all reasonable hours in the daytime into the shops or outhouses of any person employed to work up or manufacture, either by himself or by any other person under him, any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal or neglect by any such person or persons so employed to permit such entrance or inspection, such person

3. *Workmen in Cotton, Flax, &c. Manufactures.*

shall, for so refusing to permit such entrance or inspection, forfeit any sum not exceeding 20*s.* as the justices before whom he shall appear or be brought shall think proper, to be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this act: Provided always, that nothing herein contained shall authorize any such owner or other person as aforesaid to inspect any frame, tools, or apparatus wherewith such materials are worked up, in case such frame, tools, or apparatus comprise any new invention or improvement not disclosed to the public."

6 & 7 Vict. c. 40.

Proviso.

Warrant may be granted by justice on complaint on oath that person is about to abscond.

Sect. 14. "That if any manufacturer, agent, or any other person in his employment or service, shall make oath before a justice of the peace that any such materials, tools, or apparatus as aforesaid have been intrusted to any person as aforesaid, and that he has absconded, or that the deponent has just cause to suspect and does suspect that such person is about to abscond, it shall be lawful for such justice and he is hereby required to issue his warrant to apprehend such person, and bring him before him or some other justice of the peace; and if such person shall have absconded, or shall not forthwith give security, to be approved of by the said justice, for the return in a finished state of all such materials so intrusted to him, within such time as shall be then agreed on, such justice shall by warrant order any constable, with his assistants, to enter the house or other premises of such person, and take possession of all such materials, tools, or apparatus so delivered to him as aforesaid, and to bring the same before the said justice or any other justice, when such justice shall direct the same to be delivered to the owner, or his agent or servant, or other person duly authorized by him, and shall forthwith release the person in custody; but if all such materials, tools, or apparatus shall not be found in the house or other premises or the possession of such person, or shall not be produced before such justice, such person shall be deemed and taken to have purloined or embezzled such materials, tools, or apparatus, or such part thereof as shall not be found or produced, and shall be liable to any of the punishments awarded for such offence."

Receiving goods in fictitious name.

Sect. 15. "That if any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, every such person so offending, and being convicted thereof on the oath of one or more credible witness or witnesses before two or more justices, shall for every such offence be liable to the same punishment as is hereinbefore directed in respect to persons not fulfilling their engagements."

Justice to issue warrant to constable to take possession of property intrusted to any person committed for embezzlement, &c.

Sect. 16. "That in cases where any person shall have been committed for purloining, embezzling, or fraudulently disposing of all or any part of such materials, tools, or apparatus as aforesaid, which may have been intrusted to him, or shall have been convicted of any other offence against any of the provisions of this act, it shall be lawful for the justice who so committed such person, or for any justice or court before whom he has been convicted for that or any other offence, and he or they is or are hereby required, to issue his or their warrant authorizing a constable, with his assistants, to enter the house and premises of such person, and take possession of all such property so intrusted as shall be found therein, and to bring the same before the said justice or court, when the said justice or court shall direct the same to be delivered to the manufacturer, agent, or person duly authorized to receive the same."

Recovery of wages and sums due for work.

Sect. 17. "That if any manufacturer or other party employing, contracting, or engaging with any person for any work in any of the said manufactures, or connected therewith or incidental thereto, or any parts, branches, or processes thereof, and whether such work is to be performed by the said person, or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, and whether the contract or engagement shall be to work or be employed for such manufacturer or other party exclusively, or for all or part of his time, or for specific work, or otherwise, and whether such person is to be paid according to the nature or amount

of the work done, the time employed, or any other manner, shall not from time to time pay and discharge all such sums of money, wages, and hire as shall be justly due and payable to any such person, it shall be lawful for a justice of the peace, on complaint made for that purpose, to summon such manufacturer or other party to appear at a time and place to be named in such summons, and for any two or more justices of the peace to hear and determine such complaint, and order payment of such sum as shall appear to such justices to be justly due and payable, together with costs for loss of time and recovering the same, and in default of payment immediately, or within such period as the said justices shall direct, the said justices shall issue their warrant to levy the same by distress and sale of the goods and chattels of the said manufacturer or other party; and the said justices, if they shall think fit, may also, by order in writing, authorize such person to return his work unfinished, in which case such person shall not be liable to the penalties awarded by this act."

3. Workmen in Cotton, Flax, &c. Manufactures.

6 & 7 Vict. c. 40.

Sect. 18. "That no frame, loom, or machine, materials, tools, or apparatus, which shall be intrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, whether such frame, loom, or machine, materials, tools, or apparatus, shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized, or be liable to be distrained or seized, for rent or for debt, or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of the said frame, loom, or machine, or of the said materials or tools or apparatus aforesaid, or of any part thereof respectively."

Frames, &c. not belonging to workmen not liable to be seized for rent or debt owing by workmen.

Sect. 19. "That if any landlord or other person, by virtue of any distress warrant, execution, or other proceedings for rent in arrear, or money due or alleged to be due by any person whomsoever, shall distrain, seize, carry off, sell, or otherwise dispose of any frame, loom, or machine, materials, tools, or apparatus, belonging to any other person, which shall have been intrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, and whether the same shall or shall not be rented or taken by the hire, or shall distrain, seize, carry off, sell, or otherwise dispose of any materials as aforesaid, or any tools or apparatus as aforesaid, belonging to any other person, and shall refuse to restore possession of all such frames, looms, machines, tools, or apparatus to the person owing, letting, or intrusting the same, when demanded by him, or some person duly authorized by him, of the said landlord or other person, or the person acting as agent or bailiff of such landlord or other person, it shall and may be lawful to and for any justice of the peace, upon complaint on oath before him, to summon the said landlord or other person to appear before any two or more justices of the peace to answer the said complaint, and on proof of the said offence the said justices may thereupon order the property so seized, distrained, carried off, or sold to be forthwith restored, and issue their warrant to a constable or constables empowering him or them to seize the said property wherever the same shall be found, and deliver possession thereof to the person owning, letting, or intrusting the same, and to levy, by distress and sale of the goods of the said landlord or other person, the costs of obtaining the said order, and recovering and obtaining possession of the said property; and in case the said property cannot be found and seized within a time not exceeding twenty-one days, to be limited in the said warrant, or in case the said property shall have been damaged by the same having been distrained, seized, carried off, or sold, then it shall be lawful for such two justices, or any other two justices, on proof thereof, (the said landlord or other person having been first summoned by a justice,) to issue their warrant to levy by distress and sale of the goods and chattels of such landlord or other person the full value of the said property, or the amount

On refusal to restore frames, &c. unlawfully seized, justice may order restoration.

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Penalty for obliterating mark on machine.

of such damage, as the case may be, together with all costs of recovering and levying the same."

Sect. 20. "That if any person or persons shall obliterate, efface, or alter the owner's name or initials, or other distinguishing mark, on any frame, loom, or machine, or any bar or part thereof, or the moulds thereof, without the order or authority of the owner thereof, he shall, on conviction thereof before two justices of the peace, forfeit any such sum not exceeding 3*l.* as such two justices shall order and direct, to be applied, in the first place, in paying the costs of the proceedings before such justices, and the surplus, if any, to the party injured; and in default of payment of such forfeiture immediately on conviction, or within such period as the justices so convicting shall direct, then the said justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, there to be imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding two calendar months, unless the amount of such forfeiture be sooner paid."

Power to award costs to defendant.

Sect. 21. "And for the discouragement of frivolous and vexatious informations and prosecutions under this act, be it enacted, That it shall be lawful for any justices or court of petty sessions before whom any case under this act is tried to award costs to the defendant, with an allowance for his loss of time, in case of acquittal, to be paid by the prosecutor; and also, if it shall appear to such justices or court that the charge was made from a malicious, vexatious, or frivolous motive, or in case the party shall be charged with embezzlement of materials, by reason of any deficiency in the weight of the materials which he shall have returned to the person by whom they were intrusted to such party, as compared with the weight of the materials received, and it shall be proved upon the hearing of the case that such materials were knowingly and fraudulently delivered to the party charged whilst in a damp state, so that the apparent weight thereof was thereby increased, it shall be lawful for such justices or court to award to the defendant such further sum of money not exceeding 20*l.* as to such justices or court shall seem fit, to be paid by such prosecutor as a compensation for the injury done; and in default of payment such costs and allowances and compensations may be levied by distress and sale of the prosecutor's goods."

Mode of proceeding to enforce appearance.

Sect. 22. "That where any person shall be charged on oath with any offence punishable under this act one justice may receive the original information and summon the person charged to appear before any two justices of the peace at a time and place to be named in such summons, and if he shall not appear accordingly then the justices there present may either proceed to hear and determine the case *ex parte*, or any of such justices may issue a warrant for apprehending such person, and bringing him to answer the said charge before any two or more justices, or the justice before whom the charge shall be made may, if he shall so think fit, issue such warrant in the first instance, without any previous summons, and commit the person so charged to prison, in order that he may be brought forward for trial (unless he enter into such bail as may be required by such justice for his appearance at such time and place as shall be appointed); and the justices before whom the person charged shall appear or be brought shall proceed to hear and determine the case; and after adjudication all and every the subsequent proceedings to enforce obedience thereto, whether respecting the penalty, forfeiture, distress, imprisonment, costs, or other matter or thing relating thereto, may be enforced by any one of the said justices."

After adjudication proceedings may be enforced by one of the justices.

Service of summons.

Sect. 23. "That every summons to be granted by a justice of the peace under this act may be served by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate."

Limitation of

Sect. 24 provides and enacts, "That every complaint and prosecu-

tion under this act shall be commenced within six calendar months after the commission of the offence, unless the offending party shall have in the meantime left the country, and not otherwise; and that the informer or prosecutor, or any person aiding, abetting, party or privy to the commission of the offence charged, shall in every case under this act be deemed a competent witness to prove the offence."

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Time within which proceedings to be commenced.

Prosecutor, &c. a competent witness.

Sect. 25. "That in all complaints, warrants, proceedings, or prosecutions under this act, any justice or justices of the peace, and the court of petty sessions for the county, city, borough, or place where the offence shall be committed or the complaint arise, or where the said materials, frame, loom, machine, tools, or apparatus shall be given out or intrusted, lent or hired, or where the manufacturer, master, or employer shall carry on his trade or business, shall have full power and authority to act, and to hear and determine such complaint, warrant, proceeding, or prosecution, and do all other matters incident thereto: Provided always, that in all convictions or adjudication under this act one at least of the convicting or adjudicating justices shall be a person not engaged in any manufacture, trade, occupation, or employment to which this act extends, and shall not be the father, son, or brother of any such person."

What justices to have jurisdiction.

Proviso.

Application of penalties.

Sect. 26. "That all forfeitures and penalties upon convictions under this act not specially provided for shall be paid to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her majesty's use, and shall be returned to the court of quarter sessions, under the provisions of the 3 Geo. IV. c. 46." (*See "Fines and Forfeitures,"* Vol. III.)

Scale of imprisonment on summary convictions not specially provided for.

Sect. 27. "That in every case of summary conviction or adjudication under this act, not specially provided for, where the sum forfeited or adjudged to be paid, or which shall be imposed as a penalty, by any justice or justices of the peace, together with costs, if awarded, which costs such justice or justices is and are hereby authorized to award, if he or they shall think fit, in any proceeding, adjudication, or conviction under this act, shall not be paid immediately, or within such period as the said justice or justices shall direct, or where a warrant of distress shall be issued, and no sufficient distress shall be found, it shall be lawful for the convicting justice or justices to commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, according to the discretion of the said justice or justices, for any term not exceeding two calendar months, when the amount of the sum forfeited or adjudged to be paid, or of the penalty imposed, together with costs, shall not exceed 5*l.*, and for any term not exceeding three calendar months in any other case, unless the amount and costs be sooner paid."

Form of conviction.

Sect. 28. "That the justices before whom any person shall be convicted of any offence against this act may cause the conviction to be drawn up on paper or parchment in the following form of words, or in any other form of words to the like effect, and with such variations as the case shall require; (that is to say,)

——— *to wit.* { *Be it remembered, That on the day of in the year of our Lord at in the of C. D. is convicted before us, A. B. and J. P. two of her majesty's justices of the peace for the said for that he the said C. D.* [here specify the offence, and the time and place where the same was committed, as the case may be], *and we do adjudge that the said C. D. shall for the said offence forfeit and pay* [here state the penalty actually imposed, or the penalty and also the sum adjudged as the value of the articles or the amount of the injury, as the case may be], *and also pay the sum of for costs* [if so ordered]; *and we direct that the sum of shall be paid to E. F., the party aggrieved, on the day of* [*instant* or *next ensuing*], *and that the sum of shall, on the day of* [*instant* or *next ensuing*], *be paid and applied according to the direction of the statute in such case made and provided* [or as the case may be], *and that the sum of for costs shall be paid to the complainant* [if so ordered]. *Given under our hands and seals, the day and year first above written.*"

3. *Workmen in Cotton, Flax, &c. Manufactures.*

6 & 7 Vict. c. 40.

Appeal.

Sect 29. "That in all cases of summary conviction under this act, where the sum adjudged to be paid shall exceed twenty shillings, or the imprisonment shall exceed one calendar month, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be held for the county, city, borough, or place where such conviction shall have been made, (such person at the time of such conviction giving to the justices so convicting, or to the justice so presiding at the court of petty sessions at which such conviction shall take place, notice in writing of his intention to appeal, and also entering into a recognizance at the time of such notice, with two sufficient sureties, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall by the court be awarded); and upon such notice being given and such recognizance being entered into the justice or justices before whom the same shall be entered into shall liberate such person, if in custody, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem meet; and in case of the dismissal of the appeal or the confirmation of the conviction the said court shall order and adjudge the offender to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing payment of the same; and it shall be lawful for the said court, or, on the production of a certificate under the hand of the clerk of the peace for the said county, city, borough, or place, or his deputy, for any justice or justices of the peace for such county, city, borough, or place, either immediately or at any time thereafter, to issue a warrant of distress and sale, or a warrant for the apprehension and commitment of such offender for such period of time as, together with the days during which such person so convicted shall have been imprisoned, if any, previously to being discharged by reason of such appeal, shall amount to the same period or term of imprisonment for which such person was adjudged to be imprisoned at the time of conviction, or to issue a warrant of distress and sale, and if there be no sufficient distress, a warrant of apprehension and commitment, as the case may require, in like manner, in all respects, as any justice or justices could or might have done in case no notice of appeal had been given."

Proceedings not to be quashed for want of form, or be removed by *certiorari*.

Sect. 30. "That no order or conviction, or proceedings touching the same respectively, nor adjudication made or appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her majesty's superior courts of record; and that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and that where any distress shall be made for levying any money by virtue of this act the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, warrant, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage (if any) upon an action on the case."

Limitation of actions against persons acting in execution of this

General issue.

Sect. 31. "That for the protection of persons acting in the execution of this act all actions and prosecutions for damage to be commenced against any person for anything done in pursuance of this act shall be laid and tried in the county where the fact was or is charged to have been committed, and shall be commenced within two calendar months after the fact committed, and not otherwise, and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, or, in case of any action of replevin, may avow generally that the goods and chattels in ques-

tion were taken under and by virtue of this act, and may give this act and the special matter in evidence at the trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, nor if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant or avowant. Provided always, that in all such actions of damages the plaintiff shall be bound to establish, not merely that damages have been suffered by him, but that the same have been wilfully and maliciously caused by the defendant or avowant.

3. *Workmen in Cotton, Flax, &c. Manufactures.* — 6 & 7 Vict. c. 40. General issue. Tender of amends.

Sect. 32. "That nothing in this act contained shall extend to any person for any offence committed against the said hereinbefore recited acts or any of them before the passing of this act, but every such offender shall and may be prosecuted and punished in the same manner as if this act had not been made."

Offences committed before this act.

Sect. 33. "That nothing in this act contained shall extend to Scotland or Ireland, or be construed to extend to repeal any act or statute, or part thereof, now in force, and not repealed by this act."

This act not to extend to Scotland or Ireland.

Sect 34. "That this act shall not extend or be construed to extend to any manufacture, trade, occupation, or employment, except only the manufactures, trades, occupations, and employments following; (that is to say,) the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials in, on, or by the stocking-frame, warp machine, or any other machine employed in the manufacture of frame-work, knitted or looped fabrics, and every trade, occupation, operation, or employment whatsoever connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery."

To what trades this act shall extend.

Sect. 35. "That in all cases under this act the singular is to include the plural, and the masculine the feminine; and in an indictment or information for offences against the property of partners, joint stock companies, or trustees, it shall be sufficient to lay the ownership in the name of one partner or trustee and another or others; that the words 'woollen, worsted, linen, cotton, flax, mohair, or silk materials,' shall be construed to extend to any of the said materials mixed with each other or with any other material or materials; and that the words 'manufacture' and 'work' shall extend to all trades, occupations, operations, and employments whatsoever connected with or incidental to the manufacture of any of the said materials, or any parts, branches, or processes thereof, and likewise to such materials, whether the same or any part thereof be or be not in the whole or in part first wrought, made up, or manufactured or converted into merchantable wares."

Construction of terms.

Sect. 36. "That this act shall commence on 1st August, 1843."

Commencement of act.

As to the offence of destroying woollen and silk manufactures, &c., and the implements, &c., used therein, *see* "*Malicious Injuries to Property*," Vol. V.

Destroying woollen and silk manufactures, &c.

IV. Workmen in the Felt, Fur, Hat, Hemp, Leather, or Iron Manufactures.

The principal acts now in force relative to disputes between masters and servants in these trades, are the 22 Geo. II. c. 27, and 17 Geo. III. c. 56. The stat. 1 Anne, stat. 2, c. 18, and 13 Geo. II. c. 8, are still in force, except so far as they relate to servants in the woollen, linen, fustian, cotton, flax, mohair, and silk manufactures; but the provisions of these statutes are, it seems, either embodied in or altered by the 22 Geo II. and 17 Geo. III., so that we shall not notice them.

Statutes as to.

By the 22 Geo. II. c. 27, s. 1, if any person or persons whatsoever, who shall be hired or employed to make any *felt* or *hat* (*a*) or to prepare

Embezzling materials, tools, &c.

(*a*) So much of this act and all other acts relating to workmen employed in the *woollen, linen, fustian, cotton, flax, mohair*, or *silk* manufactures, is repealed by the 6 & 7 Vict. c. 40, *ante*, 883.

4. *Workmen in Felt, Fur, Hemp, Hat, &c. Manufactures.*

22 Geo. II. c. 27.

Stc.

or work up *iron, leather, fur* or *hemp* manufactures, or any manufactures made up of *fur* or *hemp*, or of any of the said materials mixed one with another, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of (*a*) any of the materials with which he, she, or they shall be respectively intrusted, whether the same, or any part thereof, be or be not first wrought, made up, manufactured, or converted into merchantable wares, [or any tool, &c., or drug or ingredient, &c. 17 Geo. III. c. 56, s. 16, *post*, 899,] and shall be thereof lawfully* convicted, by the oath, or (if the owner thereof be of the people called Quakers) solemn affirmation of the owner of such goods or materials, or by the oath or affirmation of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before two or more justices of the peace of the county, riding, division, city, liberty, town, or place where such offence shall be committed, 17 Geo. III. c. 56, s. 2, (*b*) (which oath or affirmation the said justices are hereby empowered and required to administer), it shall and may be lawful to and for the said justices, by warrant under their hands and seals, to commit the person or persons so convicted to the house of correction, or other public prison of such county, riding, division, city, liberty, town, or place, [by 17 Geo. III. c. 56, s. 1, "there to be kept to hard labour, in the case of a first offence, for any time not less than fourteen days, nor more than three months; and in the case of a second or any subsequent offence, for any time not less than three months, nor more than six months; and may likewise for the first, or for any subsequent offence, order the person convicted to be once publicly whipped (*c*), if such additional punishment shall by the said justice or justices be deemed proper."]

Buying or receiving materials from workmen.

By sect. 2, "if any person or persons shall buy, receive, accept, or take, (by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons, (hired or employed to make any felt or hat, or to prepare or work up the iron, leather, fur, or hemp manufactures, or any manufactures made up of fur, hemp, or of any of the said materials mixed one with another,) or any other materials of fur, hemp, or iron, or any leather, (whether the same or any part thereof be or be not first wrought, made up, or manufactured,) knowing the person or persons of whom he, she, or they did so buy, receive, accept, or take the said materials, to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her, or them, or shall offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or shall buy, receive, accept, or

---

(*a*) The 13 Geo. II. c. 8, s. 4, makes it an offence for servants in the leathern manufactures "to do or wilfully permit any other act whereby to lessen the value of such or any part of such gloves, &c." therein particularized. It would seem, however, that the injury to the wares as here contemplated, must be from an act in its kind similar to the acts before enumerated in the section, viz., an act of purloining, &c. This, however, is open to doubt.

(*b*) By this act of 17 Geo. III., "no person or persons, who shall be charged with any offence or offences against the said recited act of the 22nd year of the reign of his late majesty king George the Second, shall be liable to be convicted, unless before two or more justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed, any thing contained in the said recited act to the contrary hereof notwithstanding." By sect. 19, however, (*post*. 900,) one justice may issue his warrant for apprehending the offender.

By 17 Geo. III. c. 55, s. 6, "no person or persons using or exercising the trade of a master hat-maker, hat-maker, or felt-maker, shall, during the time of his continuing to use or exercise such trade, be capable of acting as a justice of the peace in the execution of this or any other act relative to the punishment of any journeyman hat-maker or apprentice who shall offend against this or any other act made for the regulation of the said trade."

(*c*) The whipping of females is abolished by 1 Geo. IV. c. 57.

take, in any manner whatsoever, of or from any person or persons whomsoever, any of the said materials, whether the same be or be not first wrought, made up, or manufactured, [or any tool or implement, drug or ingredient, &c., 17 Geo. III. c. 56, s. 16, *post*, 899,] knowing the same to be so purloined or embezzled; then, and in every such case, the person or persons so buying, receiving, accepting, or taking any such materials, being thereof lawfully convicted, in manner before prescribed by this act, for the conviction of persons purloining or embezzling the said materials, shall, for the first offence, forfeit, [by 17 Geo. III. c. 56, s. 3, any sum not more than 40*l.*, nor less than 20*l.*, as the justices before whom the conviction shall be shall judge to be most proper; and every such pecuniary penalty shall be applied, under the direction of the justices before whom the conviction shall be, in manner following; (that is to say), in the first place, the expenses of the prosecution shall be thereout defrayed: and then such satisfaction shall be made thereout to the party or parties injured, as the said justices shall think proper; and afterwards so much of the said penalty shall be paid, [and applied, one moiety thereof to the informer, and the other moiety to the churchwardens and overseers of the poor of the parish within which the said offence shall have been committed, for the use of the poor of the said parish, or if the informer shall be called to give evidence, the whole of the penalty shall in that case go to the poor of the parish, 58 Geo. III. c. 51, s. 3,] and if such pecuniary penalty as aforesaid shall not be paid on *conviction*, the said justices shall commit the person convicted to the house of correction, or other public prison, there to be kept to hard labour for any time not more than six months, nor less than three months, as the said justices shall think fit to direct, unless such pecuniary penalty shall be sooner paid; or the said justices may send the person convicted to the house of correction, or other public prison, there to remain for three days, exclusive of the day of commitment, with an order that within the said time the person so convicted shall be once publicly whipped (*a*), at such market-place, or other public place as aforesaid."]

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

17 Geo. III. c. 56

And by 17 Geo. III. c. 56, s. 4, "if any person or persons shall be brought before any justice of the peace, and shall be charged upon oath, or (being of the people called Quakers) upon solemn affirmation, of having been guilty of buying, receiving, accepting, or taking by way of gift, pawn, pledge, sale or exchange, or in any other manner, as is described by the said recited act, in the terms aforesaid, and it shall appear to such justices that the person or persons so charged hath or have been already convicted of the like offence for which he, she, or they is or are then charged, that then such justices shall not proceed to convict such person or persons, but shall commit him, her, or them, to the house of correction, or some other public prison, there to remain until the next general or general quarter sessions of the peace, to be held in and for the county, riding, division, city, liberty, town, or place where the offence shall have been committed, or until such offender or offenders shall have entered into a recognizance to answer for such offence at the said next general or general quarter sessions; and the justices in such general or general quarter sessions are hereby authorized and required to take cognizance thereof, and to hear and determine the same: and if such person shall be convicted upon the oath, or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, the person so convicted shall forfeit and pay, for such offence, any sum not more than 100*l.*, nor less than 50*l.*, as the said justices shall judge to be most proper; and every such penalty shall be applied, [after making satisfaction to the party injured, as directed by the 58 Geo. III. c. 51, s. 3, *supra*;] and if such penalty shall not be paid on conviction,

Second offence, &c.

(*a*) By the 1 Geo. IV. c. 57, the punishment of whipping females is abolished, *see* "*Whipping*," Vol. VI.

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

17 Geo. III. c. 56.

the said justices shall commit the person so convicted to the house of correction, or other public prison, there to be kept to hard labour for any time not more than six months, nor less than three months, as the said justices shall in their discretion think fit, unless such penalty shall be sooner paid; or the said justices may send the person convicted to the house of correction, or other public prison, there to remain for three days, exclusive of the day of commitment, with an order that within the said time such person shall be once publicly whipped (*a*) at such market-place, or other public place as aforesaid."

Power of commitment, when gone after appeal.

As to when the power of commitment has gone after an appeal, *see R.* v. *Twyford*, 5 *Ad. & Ell.* 430, *post*, 903.

Not returning materials unused.

By 22 Geo. II. c. 27, s. 7, "if any person intrusted with any materials hereinbefore mentioned, in order to prepare, work up, or manufacture the same, shall not use all such materials in the preparing, working up, or manufacturing of the same, and shall neglect or delay for the space of [eight days, 17 Geo. III. c. 56, s. 7,] after such materials shall be prepared, worked up, or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as shall not be used as aforesaid to the person intrusting him therewith, such neglect or delay shall be deemed and adjudged to be an embezzling or purloining of such materials, and the person or persons so neglecting or delaying being thereof convicted in manner before prescribed for the conviction of offenders against this act, shall suffer [the like punishment as is hereinbefore directed to be inflicted for purloining or embezzling, 17 Geo. III. c. 56, s. 7]." See, as to the power of the owner of materials to enter the shops, &c. of workmen to search for them, the 17 Geo. III. c. 56, s. 15, *post*, 899.

Selling materials.

By 17 Geo. III. c. 56, s. 5, "if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, [or, by sect. 16, any tools or implements, drug or ingredient; *see post*, 899,] knowing them to have been purloined or embezzled, every such person, lawfully convicted, shall be liable to the same punishment as he or she would be liable to by virtue of this act on being convicted of receiving purloined or embezzled materials, knowing them to have been purloined or embezzled."

How justices to proceed on charge on oath of suspected persons.

Sect. 6. "And whereas such materials [and by sect. 16, *post*, 899, tools or implements, drugs or ingredients,] as aforesaid, which have been purloined or embezzled, are frequently received by persons knowing the same to have been so purloined or embezzled; and such materials being afterwards worked up, or otherwise disposed of, renders it difficult to convict such offenders;" it is therefore enacted, "That when any person or persons shall be brought or charged upon oath, before any two or more justices of the peace, by virtue of this act, with being suspected of, or with having purloined or embezzled, or with having received any such materials as aforesaid, whether the same be wrought or unwrought, mixed or unmixed, knowing the same to have been either purloined or embezzled, or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath, or (being of the people called Quakers) upon the affirmation, of one or more credible witness or witnesses, to the satisfaction of such justices, that such person or persons hath or have purloined or embezzled, or hath or have received any such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, it shall and may be lawful for such justices, or for the justices at their general or general quarter sessions of the peace, and they are hereby respectively authorized and empowered (if they shall think fit), to convict such

(*a*) See note (*a*) preceding page.

person or persons of having purloined or embezzled, or of having received such materials as aforesaid, knowing the same to have been purloined or embezzled, or received from some person or persons not entitled to dispose thereof, although no proof shall be given to whom such materials belong; and the person or persons so convicted shall, for every such offence, be subject to such and the like penalties and punishments, at the discretion of such justices respectively, as persons convicted of buying or receiving any such materials as aforesaid, knowing the same to have been purloined or embezzled, are by this act subject and liable to."

4. *Workmen in Felt, Fur, Hat, Hemp, & Manufactures.*

17 Geo. III. c. 56.

Sect. 7. See this embodied in the 7th sect. of the 22 Geo. II. c. 27, *ante*, 896.

Sect. 8 repeals sect. 12 of 22 Geo. II. c. 27, and enacts, "That if any person, being hired, retained, or employed, to prepare or work up any materials, whether mixed or unmixed, for any master or masters, shall wilfully neglect or refuse the performance thereof for eight days successively; or having taken in any materials, whether mixed or unmixed, for manufacture, from one master, or two or more masters being copartners, shall afterwards take in any materials, whether mixed or unmixed, for manufacture, from any other master or masters; or shall procure or permit himself or herself to be employed or retained in any other occupation or employment whatsoever, sooner than eight days before the completion of the work first taken; then, in every such case, such person being thereof lawfully convicted by the oath, or (being of the people called Quakers) affirmation, of one or more credible witness or witnesses, before two or more justices of the peace of the county, riding, division, city, liberty, town, or place, where the offence or offences shall be committed, shall be sent to the house of correction, or other public prison, there to be kept to hard labour for any time not exceeding three months, nor less than one month."

Neglecting work, or taking in work from others.

Sect. 9. "If any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured; or if any person shall receive in his or her own name any of the said materials, in order to be manufactured by himself or herself, and afterwards deliver the same, or any part thereof, to any other person to be manufactured (without the consent of the owner thereof); or if any carrier, or other person employed to deliver any such materials to any workman, to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom such materials were ordered or intended to be delivered by the owner thereof; all and every person and persons offending in any of the cases aforesaid, shall, for every such offence, be liable to prosecution, in the same manner, and to the same punishment, as is by this act [sect. 8, *supra*] directed in respect to persons taking in any of the said materials in order to work up, and afterwards wilfully neglecting or refusing the performance of their work for the space of time aforesaid."

Receivers of materials in fictitious names, &c.

Carriers delivering to wrong consignee.

Sect. 10. "It shall and may be lawful for any two justices of the peace of any county, riding, division, city, liberty, town, or place, upon complaint made to them, upon oath, by any one credible person, or (being of the people called Quakers) upon solemn affirmation, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, [or any tools or implements, drugs or ingredients, &c., sect. 16, *post*, 899,] are concealed in any dwelling-house, outhouse, yard, garden, or other place or places, by virtue of a warrant under their hands and seals, to cause every such dwelling-house, outhouse, yard, garden, or place, to be searched in the day-time; and if any such materials, suspected to be purloined or embezzled, shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden, or other place, the same shall be found, to be brought before any two justices of the peace for the same county, riding, division, city, liberty, town or place; and if the said person or persons shall not give an account, to the satisfaction of such justices, how he, she, or they came by the same, then the said person or persons, so offending, shall be deemed and ad-

Power of justices to issue search warrants, &c.

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

judged guilty of a misdemeanor, and shall be punished in manner hereinafter mentioned, [see sect. 14, *post*, 899,] although no proof shall be given to whom such materials belong."

The search warrant which the magistrates are empowered to issue under this section is in general essential to justify an entry into a house to search for the embezzled materials. (*See Davis* v. *Nest*, 6 *C.* & *P.* 167.)

17 Geo. III. c. 56.

Peace-officers may apprehend suspected persons.

Sect. 11 "Every peace-officer, constable, headborough, or tithingman, in every county, city, town corporate, or other place, where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend, or cause to be apprehended, all and every person or persons who may reasonably be suspected of having or carrying, or any ways conveying, at any time after sunsetting and before sunrising, any of such materials suspected to be purloined or embezzled, and the same, together with such person or persons, as soon as conveniently may be, convey or carry before any two justices of the peace for the county, riding, division, city, liberty, town, or place, within which the suspected person or persons shall be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties duly entitled to dispose thereof, from whom he, she, or they bought or received the same, or some other credible witness, to testify upon oath, or (being of the people called Quakers) upon solemn affirmation, to the sale or delivery of the said materials, (which oath or affirmation respectively such justices are hereby empowered to administer,) or shall not give an account, to the satisfaction of such justices, how he, she, or they came by the same; then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong."

Justices may appoint time to produce persons entitled to dispose of materials, &c.

Sect. 12. "In either of the two cases last before mentioned, when any person or persons, who shall be brought before any two justices of the peace, shall request of such justices to appoint a reasonable time to produce the person or persons duly entitled to sell or dispose of the same, of or from whom he, she, or they bought or received the same, or some one or more credible witness or witnesses to prove the sale or delivery thereof; then, and in such case, it shall and may be lawful for the said justices, and they are hereby authorized and required to appoint such reasonable time as aforesaid, and to issue out a summons to the constable or other peace-officer of the parish or place where such person or persons, or such witness or witnesses, shall respectively reside, requiring him, her, or them, to appear before two or more justices, at such time and place as shall be so appointed by such justices, in order to be examined and give evidence on oath, or (being of the people called Quakers) solemn affirmation, of the several matters aforesaid; but such person or persons, at the time of making such request, shall enter into a recognizance, with or without surety or sureties, as such justices shall think proper, for his, her, or their appearance before them, at the time so to be set, or, for want of such recognizance as aforesaid, shall be committed until the time that shall be set or appointed by the said justices for the appearance of such party or parties, witness or witnesses; and if, at such appointed time, such person or persons shall be convicted of any of the offences aforesaid, then, and in such case, he, she, or they shall suffer such punishment as is hereinbefore directed to be inflicted on persons guilty of such offences."

How materials to be disposed of, &c.

Sect. 13. "Where any person or persons shall be convicted of a misdemeanor in either of the two cases last before mentioned, it shall and may be lawful for the justices before whom the conviction shall be, to cause the said materials so found or seized as aforesaid, to be deposited in the hands of the churchwardens or overseers of the poor of the place where such materials shall be found or seized, or in any other convenient place, for any time not exceeding thirty days; and, in the meantime, to

order the said churchwardens and overseers of the poor, or one of them, to insert an advertisement in some one or more of the public newspapers usually published or circulated in or near such place, or otherwise to cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where the same are so deposited, to the end that persons having lost such materials, or any reputable person or persons in their behalf, may come and claim the same; and in case any person or persons can prove his, her, or their property in the said materials upon oath, or (being of the people called Quakers) upon his, her, or their solemn affirmation, to the satisfaction of any two justices of the peace for such county, riding, division, city, liberty, town, or place, then such justices shall order restitution of such materials to the owner or owners thereof, after paying the reasonable charges of removing, depositing, and giving public notice of the same; but if, before the end of the said thirty days, no person or persons shall come and prove his, her, or their property in such materials, nor any reputable person or persons on his, her, or their behalf, then the said justices shall order and direct the same to be sold for the best price that can reasonably be had, and after deducting such charges as aforesaid, together with the charges of sale, one moiety of the money arising from such sale shall be given to the person or persons, or either of them, who shall apprehend or prosecute the offender or offenders guilty of either of the misdemeanors aforesaid, as the said justices shall appoint; and the other moiety thereof, either to and amongst the poor of the parish, town, or place where the conviction shall be, or to such public charity or charities as the justices convicting shall appoint."

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

17 Geo. III. c. 56.

Sect. 14. Every person adjudged guilty of any of the misdemeanors in ss. 10—13 of this act, shall forfeit, for the first offence, 20*l*; for the second, 30*l*.; and for every subsequent offence, 40*l*.; to be levied by distress and sale of the offenders' goods, by warrant of the convicting justices: of which forfeiture, one moiety shall be paid to the informer, and the other to the poor of the parish, or to such public charity as the justices appoint [but these penalties are now otherwise applied, *see* 58 Geo. III. c. 51, ss. 3, 4, *ante*, 895]. If no sufficient distress can be found, they may commit the offender to any gaol in their jurisdiction, for one month for the first, two for the second, and six for every subsequent offence.

Subsequent offences; penalties, &c. for.

Sect. 15. "It shall be lawful for the owner or owners of any such materials, from time to time, as occasion shall require, to demand entrance, and enter, at all seasonable hours in the day time, into the shops or outhouses of any person or persons employed by him or them to work up any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal, by any such person or persons so employed, to permit such entrance or inspection, he, she, or they, so refusing, shall forfeit and pay such sum of money, not exceeding 40*s*., nor less than 10*s*., as the justices before whom he, she, or they shall be convicted, shall think proper, to be recovered and applied in the same manner as is by this act directed for the misdemeanor of being in the possession of any such materials, without being able to account satisfactorily for such possession."

Owner of materials may enter shops, &c. of workmen to search for.

Sect. 16. "Every penalty or punishment directed by, or other provision contained in the said recited act, in respect to the said materials, so far as the said recited act is not varied by this act, and all the provisions in this act contained in respect to the said materials, shall extend and be applicable to any tool or tools, and implement or implements, with which any person or persons shall be intrusted for making, working up, or manufacturing the said materials, and also to any drug or drugs, ingredient or ingredients, with which any person or persons shall be entrusted, for the purpose of dyeing, preparing, or manufacturing such of the aforesaid materials as are usually dyed, prepared, or manufactured, in the same manner as if the said tools and implements, drugs and ingredients, were particu-

22 Geo. II. c. 27, extended to tools and implements.

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufacturers.*

larly mentioned, both in the said recited act and in the preceding provisions of this act."

17 Geo. III. c. 56.

Dyeing materials of master without his consent, &c.

Sect. 17. "If any person hired, retained or employed as a journeyman dyer, or as a servant or apprentice, in the dyeing of any felt or hat, or any leather, or fur materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the said materials, shall, without the consent of the master, person, or persons, by whom such journeyman, servant, or apprentice, shall be hired, retained, or employed, wilfully dye any of the said materials, whether wrought or unwrought, or mixed or unmixed with other of the said materials, or, without such consent, shall wilfully receive any such materials as aforesaid, for the purpose of dyeing the same, whether the same shall be dyed or prepared for dyeing, he or she so guilty of either of the said offences shall, for the first offence, forfeit the sum of 10*s.*; and, for the second offence, the sum of 20*s.*; and for every subsequent offence, the sum of 40*s.*; or if any person shall procure any such materials as aforesaid, to be dyed by any person so hired, retained, or employed as a journeyman, servant or apprentice, without the consent of his or her master or employer, or shall offer any such materials to any such journeyman, servant, or apprentice, for the purposes aforesaid, he or she so offending, being thereof lawfully convicted, by the oath, or (being of the people called Quakers) affirmation, of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place, where the offence shall be committed, shall, for the first offence, forfeit the sum of 5*s.*; and for the second offence, the sum of 20*s.*, and for every subsequent offence, the sum of 4*l.*; and each of the said penalties shall be paid to the informer or informers; and in case of nonpayment on conviction, the person so convicted shall be committed, by the justices before whom the conviction shall be, to the common gaol or house of correction, to remain for any time not exceeding one month, as such justices shall order and direct."

Recovering penalties.

Sect. 19. "It shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town, or place, and he is hereby required, upon complaint to him made upon oath, or (if the person complaining be of the people called Quakers) solemn affirmation, of any offence committed against this act, within the same county, riding, division, city, liberty, town, or place, to issue his warrant for apprehending and bringing before any two or more justices of the peace of the same county, riding, division, city, liberty, town, or place, the person or persons charged with such offence; and the justices before whom such person or persons shall be brought, are hereby authorized and required to hear and determine the matter of such complaint, and to proceed to judgment and conviction thereupon."

Appeal.

Sect. 20. "If any person shall think himself or herself aggrieved by the order or judgment of any justices before whom he or she shall have been convicted of any of the offences in the said acts of the twelfth year of the reign of king George the First, and the twenty-second year of the reign of king George the Second, or in this act, such person may appeal, and the said justices are hereby required to make known to such person, at the time of such conviction, his or her right to appeal, to the next general or general quarter-sessions of the peace to be holden for the county, riding, division, city, liberty, town, or place, where such conviction shall have been made (such person, at the time of such conviction, giving to such justices notice in writing of his or her intention to appeal, and also entering into a recognizance, at the time of such notice, with sufficient sureties, conditioned to try such appeal, and to abide the judgment of, and pay such costs as shall be awarded by, the justices at such sessions); but if the person giving such notice of appeal shall not, at the time of giving such notice, enter into such recognizance as aforesaid, then the justices, to whom such notice of appeal shall have been given, shall and may commit such person or persons to the house of correction, or other public prison, of such county, riding, division, city,

liberty, town, or place, there to remain until the said next general or general quarter-sessions of the peace to be holden in and for such place, unless such recognizance shall be sooner entered into; and the said justices before whom such conviction shall have been made, or any other two or more justices of the same county, riding, division, city, liberty, town, or place, are hereby empowered and required to take, and the justices at such sessions are hereby authorized and required, upon due proof made of such notice of appeal, either by the acknowledgment of the justices to whom the same shall have been given, or otherwise, to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party; and if, upon the hearing of such appeal, the judgment of the justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall, within forty-eight hours next after the same shall be so affirmed, suffer such corporal punishment as shall have been directed to be inflicted upon him or her for the offence whereof he or she shall have been convicted, or shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices in the said sessions shall award to be paid by him or her, for defraying the expenses sustained by the defendant or defendants in such appeal; or, in default of making such payment, shall be committed to the common gaol, or house of correction, in the same manner, and for the same time, to be computed from the affirmance of such conviction, as shall be directed by the original judgment of conviction, unless the person or persons so convicted shall have been imprisoned under the original conviction, in which case the time for which such person or persons shall have been so confined shall be included in the order of confirmation."

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

17 Geo. III. c. 56.

Commitment.

Upon a conviction by two justices for an offence against the stat. 17 Geo. III. c. 56, if the justices at the time of such conviction make known to the person convicted his right to appeal, and he declines appealing, they need not proceed to inform him of the necessary steps to be taken by him in order to appeal. (*R.* v. *The Just. of W. R. of Yorkshire*, 3 *M. & Sel.* 493. *See further*, "*Appeal*," Vol. I. p. 154.)

Conviction. Form of, &c.

Sect. 21. "In respect to all offences which shall be committed against the said recited act of the twenty-second of George the Second, so much of the said act of the twenty-third of George the Second as prescribes a form of conviction for offences against the said act of the twenty-second of George the Second, shall be repealed; and that the justices before whom any offender shall be convicted of any offence, either against the said act of the twenty-second of George the Second, or varied by this act, or against this act, shall cause the conviction to be certified to the next general or quarter sessions of the peace to be held in and for the county, riding, division, city, liberty, town, or place, where such conviction was made, to be filed with the records of such sessions; and such conviction shall and may be drawn up and written on parchment, and certified in the following form of words, as far as the name of the person and the nature of the case will admit of; (that is to say,)

Middlesex [or any other place, as the case shall be] *to wit.* } *Be it remembered, that on the day of , in the year of our Lord , A. B. was convicted before us, of his majesty's justices of the peace in and for the said county of* [or, *for the riding of the said county of*, or, *for the city, liberty, town, or place as aforesaid, in the said county* [as the case shall be] *of*]. [Here specify the offence, and when and where the same was committed.] *Given under our hands and seals, the day and year first above written.*"

It seems that it will not be sufficient merely to follow this form of conviction, there being a discretionary punishment as to some of the offences included in this act. (*Rex* v. *Dempsey*, 2 *T. R.* 96; *Dick. Sess.* 2*nd ed.* 701, 3*rd ed.* 591; *R.* v. *Barrett*, 1 *Salk.* 383; *R.* v. *Helps*, 3 *M. & Selw.* 331. *See Evans, Col. Stat.* Part VI. Class XXXI. Vol. 8, p. 217, (I.))

4. *Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.*

17 Geo. III. c. 56.

It has also been observed, where there is a discretion as to the duration of imprisonment to be suffered for want of distress, as in cases depending upon sect. 4, the general practice of the sessions has been to require such imprisonment to appear on the face of the conviction, and it seems to be necessary that it should so appear.

But the general rule is, that where a conviction adapts the state of facts to the words of the statute, that is sufficient; therefore, where a conviction on this statute stated that A. B. was convicted before the magistrates, upon the oath of J. I. a credible witness, of having in his possession, in his dwelling-house, certain materials used in the woollen manufacture, suspected to be embezzled and purloined, to wit, &c., he not producing the party from whom he bought the same, or giving a satisfactory account, and then going on to adjudicate, is good. (*Daris* v. *Nest and others*, 6 *Car. & P.* 167. *See further, title "Conviction,"* Vol. I.)

Conviction to be filed.

Want of form.

Certiorari, &c.

Appeal.

By sect. 22, "No order made touching or concerning any of the matters in this act contained, or any proceedings to be had touching the conviction of any offender or offenders against the said act of the twenty-second of George the Second, or this act, shall be quashed for want of form, or be removed or removable by *certiorari* into his majesty's court of King's Bench; and the justices before whom such convictions shall be had, shall cause the same, drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the next general or general quarter-sessions of the peace to be held for the county, riding, division, city, liberty, town, or place, wherein such conviction was had, to be filed and kept amongst the records of the said general or general quarter-sessions; and in case the person or persons so convicted shall appeal from the judgment of the said justices, to the said general or general quarter-sessions, the justices on such general or general quarter-sessions are hereby required, upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the direction of the said act, any law or usage to the contrary notwithstanding."

This section has been held to take away the writ of *certiorari* only from offences for the first time created by 22 Geo. II. c. 27, and not to apply to those created by 12 Geo. I. c. 34, and extended to the silk and cotton trades by 22 Geo. II. c. 27. This was decided in the case of *R.* v. *Rogers*, 5 *B & Ald.* 773; *In re Kaye*, 1 *D. & R.* 436, *S. C.*, where a rule had been granted for a *certiorari* to remove an order of sessions, confirming a warrant of distress, signed by two justices, for enforcing the payment of wages, from *Thomas Kay* to *William Rogers*, for work done by the latter in the silk manufacture, and the cotton manufacture. The wages for which the warrant issued had been previously paid in goods, which payment the justices altogether disallowed. The sessions, on appeal, considered the point of law so doubtful, that they confirmed the order, subject to a special case. The question was, whether the *certiorari* was taken away. *Et per Bayley*, J., "By the 22 Geo. II. c. 27, a variety of specific offences were created; and that having been done, by the last clause the provisions of the 12 Geo. I. c. 34, were extended to the silk and cotton trade. Now, I think that the best construction we can give to the 17 Geo. III. c. 56, s. 22, on which the question turns, will be to hold, that it extends only to the offences created for the first time by the 22 Geo. II. c. 27. If so, the writ of *certiorari*, in the present case, is not taken away." And the writ was granted. See now as to the right of appeal in disputes between masters and workmen in the silk, cotton, woollen, linen, and other trades enumerated in the 6 & 7 Vict. c. 40, *ante*, 883.

A conviction under the 6th section of the act, for embezzling materials, although confirmed on appeal, cannot be removed by *certiorari*, that writ being taken away by sect. 22 of that statute. (*Reg.* v. *Cook*, 1 *Dowl. N. S.* 300.)

Commitment after.

Under statute 17 Geo. III. c. 56, ss. 1, 2, 20, 22, two justices may convict

and sentence to imprisonment; and the party convicted may appeal to sessions, giving notice to the justices at the time of conviction, and at the same time entering into recognizance with sufficient sureties to try the appeal and abide the judgment of sessions; but if he do not at such time enter into such recognizance, the convicting justices are to commit him till the sessions, unless such recognizance be sooner entered into, and are to transmit the conviction to the sessions; and the sessions, on proof of notice of appeal, and on receiving the conviction, are to hear the appeal; and if the conviction be affirmed, the party is to suffer the punishment originally adjudged, the time of imprisonment, if inflicted, being computed from the time of affirmance, unless the party has been imprisoned under the original conviction, in which case the time for which he has been so confined is to be included in the order of confirmation. A party convicted by two justices, and sentenced to eleven weeks' imprisonment, gave notice of appeal, and was committed for not entering into recognizance. By the practice of sessions, the appeal is to be entered, and the order for hearing it obtained, by the party disputing the conviction. The party not having entered the appeal, the sessions discharged him. *Semble*, that the convicting magistrates had no longer power to commit in execution of the conviction. But held, that, at any rate, no *mandamus* should be granted to compel them to do so. (*Rex* v. *Twyford*, 5 *Ad. & El.* 430.)

4. Workmen in Felt, Fur, Hat, Hemp, &c. Manufactures.

By the 10 Geo. IV. c. 52, the 4 Geo. IV. c. 34, relative to the powers of justices in determining complaints between masters and servants, is extended "to all persons engaged, whether as masters, servants, apprentices, or otherwise, in the several manufactures, trades and occupations," mentioned in the 17 Geo. III. c. 56, relative to felt, fur, hats, hemp, and iron.

Wages, &c.

V. Workmen in the Manufactures of Clocks and Watches.

By 27 Geo. II. c. 7, s. 1, "If any person or persons whatsoever, who shall be hired or employed by any person or persons practising the trade or trades of clock-making or watch-making, or any part or branch, or parts or branches of such trade or trades, to make, finish, alter, repair, or clean, any clock or clocks, watch or watches, or any part or parts of a clock or clocks, watch or watches, or be intrusted by any person or persons practising the said trade or trades, with any gold, silver, or other metal or material to be, or that shall be, in the whole or in part wrought or manufactured for any part or parts of a clock or clocks, watch or watches, or any diamond or other precious stone to be, or that shall be, set or fixed in or about any clock or clocks, watch or watches, shall, after the first day of May, 1754, purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any clock or watch, or any part or parts of any clock or watch, or any gold, silver, or other metal or material, or any part thereof, or any diamond or other precious stone, with which such person or persons shall be intrusted by any person or persons practising the said trade or trades, or any part or branch, or parts or branches of such trade or trades, and shall be thereof convicted by the owner of such goods, or by the oath of any other credible witness or witnesses, or by the confession of the person or persons charged with such offence, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place, where such offence shall be committed, or where the person or persons so charged shall reside or inhabit (which oath the said justice or justices is and are hereby empowered and required to administer), every such offender shall, for the first offence, forfeit 20*l.*; and in case the said forfeiture shall not be forthwith paid, the justice or justices before whom such conviction shall be had, shall commit the party or parties so convicted to the house of

Workmen embezzling materials put out to work.

First offence.

5. *Workmen in the Manufactures of Clocks and Watches.*

27 Geo. II. c. 7.

correction or other public prison of such county, riding, division, city, liberty, town, or place, there to be kept to hard labour for the space of fourteen days, unless such forfeiture be sooner paid; and if, within two days before the expiration of such fourteen days, such forfeiture shall not be paid, the said justice or justices is and are hereby empowered to order the person or persons so convicted to be publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender or offenders shall be respectively committed; and in case of a further conviction in manner before prescribed by this act, for or upon a second or other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner aforesaid, shall, for every second or other subsequent offence, forfeit 40*l.*; and in case the said forfeiture shall not be forthwith paid, the justice or justices before whom such conviction shall be had, shall commit the person or persons so again offending to the house of correction or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders shall be committed, the said forfeiture shall not be paid, the said justice or justices is and are hereby empowered to order the person or persons so again offending to be publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable."

Second offence.

Receivers.

Sect. 2. "If any person or persons shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons whomsoever, any clock or watch, or any part or parts of a clock or watch, or any gold, silver, or other metal or material as aforesaid, whether the same, or any part thereof, be or be not wrought or manufactured, or any diamond, or other precious stone, which shall have been intrusted with any person or persons hired or employed as aforesaid, by any person or persons practising the said trade or trades, he, she, or they, so buying, receiving, accepting, or taking any such goods, materials, or effects, knowing the same to be so purloined or embezzled, being thereof lawfully convicted in manner before prescribed, for the conviction of persons purloining or embezzling the said goods, materials, or effects, shall, for the first offence, forfeit 20*l.*; and in case the said forfeiture shall not be forthwith paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other public prison as aforesaid, there to be kept to hard labour, for the space of fourteen days, unless the said forfeiture shall be sooner paid; and if, within two days before the expiration of the said fourteen days, the said forfeiture shall not be paid, the said justice or justices is and are hereby empowered and required to order the person or persons, so convicted, to be publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender or offenders shall be respectively committed, once or oftener, as to such justice or justices shall appear reasonable; and in case of a further conviction for or upon a second or any other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner before prescribed, shall, for every second or other subsequent offence, forfeit 40*l.*; and in case the said forfeiture shall not be forthwith paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if, within seven days before the expiration of the time for which such offender or offenders shall be so committed, the said forfeiture shall not be paid, the said

irst offence.

Second offence.

justice or justices is and are hereby empowered and required to order such offender or offenders to be publicly whipped at the market-place, or some other public place of the city, town, or place, where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable; and the said respective forfeitures, when recovered, after satisfaction shall have been made thereout to the party or parties injured, together with such costs of prosecution as shall be judged reasonable by the justice or justices before whom such conviction shall have been had, shall be paid and applied to and for the use of the poor of the parish or place where the person or persons so convicted shall reside or inhabit."

5. *Workmen in the Manufactures of Clocks and Watches.*

27 Geo. II. c. 7.

Appeal.

Sect. 3. "If any person convicted as aforesaid, of purloining, embezzling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of, or of buying, receiving, or taking to pawn any of the goods, materials, or effects hereinbefore mentioned, shall think himself or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter sessions of the peace, which shall be held for the county, riding, division, city, liberty, town, or place, where such judgment shall have been given; and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices in the said general or quarter sessions; which recognizance the said justice or justices before whom such conviction shall be had, is and are hereby empowered and required to take; and the justices in the said general or quarter sessions are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party; and if, upon the hearing of the said appeal, the judgment of the justice or justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices in the said general or quarter sessions shall award to be paid by him or them for defraying the expenses sustained by the defendant or defendants in such appeal; or, in default of making such payments, shall suffer the respective pains and penalties by this act inflicted upon persons respectively who shall neglect to pay or shall not pay the respective forfeitures by this act imposed upon such persons respectively, who shall be convicted of purloining, embezzling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of any of the goods, materials, or effects hereinbefore mentioned, or of persons buying, receiving, or taking to pawn any such goods, materials, or effects."

Conviction to be filed.

Sect. 4. "The justice or justices of the peace before whom any person shall be convicted, in manner prescribed by this act, of purloining, embezzling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of, or of buying, receiving, or taking to pawn, any of the goods, materials, or effects aforesaid, shall cause such respective conviction to be drawn up in the form and words following; (that is to say,)

Form of conviction.

Middlesex, to wit. } *Be it remembered, that on the day of , in the year of his majesty's reign, A. B. was convicted before me* [or, *us*], *of his majesty's justices of the peace for the said county of* , [or, *for the riding*, or *division of the said county of* , or, *for the city, liberty, or town of in the said county of* as the case shall be], *of purloining, embezzling, secreting, selling, pawning, exchanging, or unlawfully disposing of, or of buying, receiving, or taking to pawn,* [as the case shall happen to be], [specifying the respective goods, materials or effects], *the property of C. D., of* , *in the county of*

5. *Workmen in the Manufactures of Clocks and Watches.*

27 Geo. II. c. 7.

Given under my hand and seal, [or, *our hands and seals*], *the day and year aforesaid.*

Which said form and conviction shall not be liable to be removed by *certiorari* into his majesty's court of King's Bench; and the said justice or justices before whom such conviction shall be had, shall cause the same, drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the next general or quarter sessions of the peace, to be held for the county, riding, division, city, town, or liberty, wherein such conviction was had, to be filed and kept amongst the records of the said general or quarter sessions; and in case any person or persons so convicted shall appeal from the judgment of the said justice or justices to the said general or quarter sessions, the justices in such general or quarter sessions are hereby required, upon receiving the said conviction, drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act; any law or usage to the contrary notwithstanding."

Warrant of apprehension.

Sect. 5. "It shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town, or place, and he is hereby required, upon complaint to him made upon oath of any offence committed against this act within the same county, riding, division, city, liberty, town, or place, to issue his warrant for apprehending and bringing before him, or before any other justice or justices of the peace of the same county, riding, division, city, liberty, town, or place, the person or persons charged with such offence: and the justice or justices before whom such person or persons shall be brought, is and are hereby authorized and required to hear and determine the matter of every such complaint, and to proceed to conviction and judgment thereupon."

VI. Workmen in the Bone and Thread-Lace Manufactures.

The 19 Geo. III. c. 49, s. 1, as to the payment of wages in money, is repealed by stat. 1 & 2 Will. IV. c. 36, *post*, 908; and see the present enactment, 1 & 2 Will. IV. c. 37, *post*, 908.

How wages to be recovered (*a*).

Sect. 3. "If any sum or sums of money shall be due and owing to any person or persons employed in the making of any bone or thread lace, for his or her labour, or for the purchase of any such lace, every such person shall and may apply to any justice of the peace for the county, city, or place, where the cause of complaint shall arise; and in case it shall, upon the oath of the party complaining (which oath such justice is hereby empowered to administer), appear to such justice that such money is due and owing, as aforesaid, then such justice shall and is hereby authorized and required to cause the same to be levied and recovered in the same manner as the forfeiture hereinbefore imposed is directed to be levied and recovered."

Appeal.

Sect. 4. "If any person shall think himself or herself aggrieved by any thing done in pursuance of this act, it shall and may be lawful for any such person to appeal to the justices of the peace at any general quarter sessions to be holden for the county, city, or place, where the act, order, or proceeding, appealed against, shall be made or done, within six calendar months next after the making or doing thereof, the person appealing first giving fourteen days' previous notice to the person or persons in whose favour such act, order, or proceeding shall be made or done, of his or her intention to bring such appeal; and the justices at such quarter sessions are hereby authorized and required to hear and determine the matter of every such appeal, and to make such order therein, and to

(*a*) These provisions of 19 Geo. III. c. 49, are not, it seems, repealed by the 1 & 2 Will. IV. c. 36, *post*, 908.

award such costs to either party as they shall think proper, and by their order or warrant to levy the costs which shall be so awarded by distress and sale of the goods and chattels of the person or persons liable to pay the same, rendering the overplus, if any, to the owner or owners of such goods and chattels, after deducting the reasonable charges of such distress and sale; and the determination of the justices in the said quarter sessions shall be final, binding, and conclusive upon all the parties."

7. Shoemakers within the Bills of Mortality.

VII. Shoemakers within the Bills of Mortality.

By 9 Geo. I. c. 27, s. 1, "If any journeyman shoemaker, or other person, hired or employed as such, within the bills of mortality, shall after the twenty-fourth day of June, in the year of our Lord, 1723, be accused by the master so hiring or employing such journeyman or other person for or concerning any work done in that manufacture, shall and may be heard and determined by any two justices of the peace of the county, riding, division, city, town, or place, where the matter in controversy shall happen or arise, who are hereby empowered to summon and examine witnesses on oath or affirmation, concerning the same, which oath or affirmation the said justices are to administer and take."

Purloining shoes or materials.

By 13 Geo. II. c. 8, s. 8, "All and every person or persons who shall be first retained or employed in the making up of any gloves, breeches, boots, shoes, slippers, or other wares as aforesaid, for any one master, and shall neglect the performance thereof, either by procuring or permitting himself to be subsequently retained or employed by any other master or person whatsoever, before he or they shall have completed the work or service in, or to do which he or they was or were first and originally so retained or employed, and shall be first delivered to him or them, then, and in every such case, every person so offending, being thereof lawfully convicted by the oath or oaths, affirmation or affirmations, of one or more credible witness or witnesses, before one or more justice or justices of the peace, where the offence or offences shall be committed, the person or persons so convicted shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month."

Journeymen neglecting work, or quitting service, &c.

Sect. 9. "If any person or persons shall think him, her, or themselves aggrieved by any judgment or order of the said two justices, it shall and may be lawful for such person and persons to appeal from the judgment, order, and determination of the said two justices, to the justices of the peace, at their next general quarter sessions of the peace, to be held for the same county, riding, division, city, town, or place, where the matter in dispute shall arise (giving eight days notice of such appeal to the person or persons against whom such appeal shall be brought and prosecuted); and such justices of the peace, at their next general quarter sessions, are hereby empowered to summon and examine witnesses on oath or affirmation (which oath or affirmation they are hereby empowered to administer and take,) and to hear and finally determine the matter of the said appeal, and at such quarter sessions shall award and order to the party on whose behalf such appeal is determined, such reasonable costs and charges to be paid by such appellant, or by the person or persons appealed against, in regard of such appeal, as to the said justices, or the major part of them, shall seem meet: but no order made by the said two justices of the peace as aforesaid shall be appealed from, quashed, or vacated for want of form only."

Appeal.

See the further provisions of 22 Geo. II. c. 27, *ante*, 893; and the 17 Geo. III. c. 56, s. 17, *ante*, 900.

Further provisions.

VIII. Tailors and Workmen within the Bills of Mortality.

The 5 Geo. IV. c. 95, s. 1, repeals the 8 Geo. III. c. 17, regulating the wages and working-hours of tailors; and also the 7 Geo. I. st. 1, c. 13,

Repeal of acts.

8. Tailors and Workmen within the Bills of Mortality.

excepting so much thereof as relates to the recovery of wages, or to journeymen tailors, or servants departing from their service, or refusing to enter into work or employment, as therein mentioned.

Leaving work unfinished.

By 7 Geo. I. st. 1, c. 13, s. 6, "If any person actually retained or employed as a journeyman tailor, or servant, in the art or mystery of a tailor, as aforesaid, within the limits aforesaid, shall at any time or times after the first day of May, 1721, depart from his service before the end of the term or time for which he is or shall be hired or retained, or until the work for which he was hired or retained shall be finished, or, not being retained or employed, shall refuse to enter into work or employment (after request made for that purpose by any master tailor, for the wages and hours limited, or to be limited and appointed as aforesaid), unless it be for some reasonable or sufficient cause, to be allowed by two justices of the peace within the limits aforesaid; then and in every such case, every person so offending, being thereof lawfully convicted as aforesaid, shall be sent to the house of correction, there to be kept to hard labour for any term not exceeding two months."

Appeal.

Sect. 9. "It shall and may be lawful for any person aggrieved by any order or orders to be made by any two or more justices of the peace, as aforesaid, to appeal to the justices of the peace assembled at the next general quarter sessions to be holden for the city, division, parish, or place where such order shall be made, giving six days notice of such appeal; and such justices in such general quarter sessions shall finally hear and determine the matter, and shall have power to award reasonable costs to either party, as to them shall seem just."

IX. Wages of certain Artificers, Labourers, and Manufacturers, to be paid in Coin.

Repeal of prior acts.

The 1 & 2 Will. IV. c. 36, repeals all the prior statutes and enactments which regulate or relate to the payment of the wages of workmen in the several trades and occupations therein enumerated in goods or by way of truck.

Sect. 2 provides, that nothing therein contained shall repeal any provisions contained in any of those acts respecting the recovery by any workmen or labourers of the wages of their labour, or to deprive any such workmen or labourers of any remedies by law provided for the recovery of any such wages.

1 & 2 Will. IV. c. 37.

By the 1 & 2 Will. IV. c. 37, intituled "An Act to prohibit the Payment, in certain Trades, of Wages in Goods, or otherwise than in the Current Coin of the Realm," [15th October, 1831,] reciting that "it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm;" it is enacted, "That in all contracts hereafter to be made for the hiring of any artificer in any of the trades hereinafter enumerated, or for the performance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current coin of this realm only, and not otherwise; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null, and void."

Contracts for hiring of artificers must be made in current coin of realm;

and must not contain stipulations as to manner in which wages shall be expended.

Sect. 2. "If in any contract hereafter to be made between any artificer in any of the trades hereinafter enumerated (ss. 19, 25,) and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void."

Wages must be paid in coin.

Sect. 3. "The entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer

in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods, or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null, and void."

9. *Wages of Artificers, Labourers, &c.*

1 & 2 Will. IV. c. 37.

Payment in goods illegal.

Sect. 4. "Every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servants' wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such his employer in the current coin of this realm."

Artificers may recover wages, if not paid in coin.

Sect. 5. "In any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid, against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour in any of the trades hereinafter enumerated, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."

In action for wages no set-off allowable for goods supplied by employer, or by any shop in which employer interested.

Sect. 6. "No employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to any such artificer by any such employer, whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest."

Employer shall not sue artificer for goods supplied on account of wages.

Sect. 7. "If any such artificer as aforesaid, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done in any of the said trades, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in reimbursing such parish or place all costs and charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons."

If artificer or wife or children become chargeable to the parish, overseers may recover wages earned within the three preceding months, and not paid in cash.

Sect. 8. "Provided always, that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any actual payment, to any such artificer as aforesaid, of the whole or any part of his wages, either in the notes of the governor and company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to his majesty's revenue of stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts, or orders as aforesaid,

Not to invalidate payment of wages in bank notes, if artificer consents.

9. *Wages of Artificers, Labourers, &c.*

shall for the purposes of this act be as valid and effectual as if such payments had been made in the current coin of the realm."

1 & 2 Will. IV. c. 37.

Penalties on employers entering into contracts hereby declared illegal.

Sect. 9. "Any employer of any artificer in any of the trades hereinafter enumerated, who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared illegal, shall for the first offence forfeit a sum not exceeding 10*l.* nor less than 5*l.*, and for the second offence any sum not exceeding 20*l.* nor less than 10*l.*, and in case of a third offence any such employer shall be and be deemed guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine only, at the discretion of the court, so that the fines shall not in any case exceed the sum of 100*l.*."

Penalties how to be recovered.

Sect. 10. "That all offences committed against this act, and not hereinbefore declared a misdemeanor, shall be inquired of and determined, and that all fines and penalties for such offences shall be sued for and recovered by any person or persons who shall sue for the same, before any two justices of the peace having jurisdiction within the county, riding, city, or place in which the offence shall have been committed; and that the amount of the fines, penalties, and other punishments to be inflicted upon any such offenders shall, within the limits hereinbefore prescribed, be in the discretion of such justices, or, in cases of misdemeanor, of the court before which the offence may be tried; and in case of a second offence against this act, it shall be sufficient evidence of the previous conviction and offence, if a certificate, signed by the clerk of the peace or other officer having the custody of the record of such previous conviction, shall be produced before the said justices inquiring of such second offence, in which certificate shall be stated in a compendious form the general nature of the offence for which such previous conviction was had, and the date of such previous conviction; and so, in like manner, upon the trial of any indictment or information for any such misdemeanor as aforesaid, it shall be sufficient evidence of such second conviction for a like offence if a certificate thereof, signed by the clerk of the peace or other officer having the custody of the record of such second conviction, in such form as aforesaid, be produced to the court and jury: Provided always, that no person shall be punished as for a second offence under this act unless ten days at the least shall have intervened between the conviction of such person for the first and the conviction by such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this act, unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction by such person of the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed by any such person against this act shall be inquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this act by an equal number of distinct and separate penalties, as though each of such offences were a first or a second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence."

Second offence.

Proviso.

Justices may compel attendance of witnesses.

Sect. 11. "It shall be lawful for any one justice of the peace, in all cases where any information or complaint shall be made as aforesaid, and he is

hereby authorized and required, at the request in writing of any of the parties to the said complaint, and on the oath of the informer or complainant, or of the person informed or complained against, that he believes that the attendance of any person or persons as a witness or witnesses will be material to the hearing of such information, to issue his summons to any such person or persons, witness or witnesses, to appear and give evidence on oath before himself and such other justice or justices as shall hear and determine such information or complaint, the time and place of hearing and determining the same being specified in the said summons; and if any person or persons so summoned shall not appear before the said last-mentioned justices at the time or place so specified in the said summons, and shall not offer any reasonable excuse for the default, to the satisfaction of the said last-mentioned justices, or appearing according to the directions of the said summons shall not submit to be examined as a witness or witnesses, then and in every such case it shall be lawful for such last-mentioned justices, and they are hereby authorized, (proof on oath, in the case of any person not appearing according to such summons, having been first made before such last-mentioned justices of the due service of such summons on every such person, by delivering the same to him or to her, or by leaving the same at the usual place of abode of such person, twenty-four hours at the least before the time appointed for such person to appear before such last-mentioned justices,) by warrant under the hands and seals of such last-mentioned justices to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of the said justices, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person or persons shall submit to be examined and give evidence."

9. *Wages of Artificers, Labourers, &c.*

1 & 2 WILL. IV. c. 37.

Sect. 12. "All justices of the peace shall and are hereby empowered, on the conviction of any person or persons for any offence against this act, in default of payment of any penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hands and seals of such justices, together with the reasonable costs of such distress and sale; and in case it shall appear to the satisfaction of such justices, either by the confession of the offender or offenders or by the oath of one or more credible witness or witnesses, that he, she, or they hath not or have not goods and chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justices may, without issuing any warrant of distress, commit the offender or offenders to the common gaol for three calendar months (unless the same be sooner paid), in such manner as if a warrant of distress had been issued, and a return of *nulla bona* made thereon."

Power to levy penalties by distress.

Commitment.

Sect. 13. "No person shall be liable to be convicted of any offence against this act committed by his or her copartner in trade, and without his or her knowledge, privity, or consent; but it shall be lawful, when any penalty, or any sum for wages, or any other sum, is ordered to be paid, under the authority of this act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods belonging to any copartnership concern or business in the carrying on of which such charges may have become due or such offence may have been committed; and in all proceedings under this act to recover any sum due for wages it shall be lawful in all cases of copartnership for the justices, at the hearing of any complaint for the nonpayment thereof, to make an order upon any one or more copartners for the payment of the sum appearing to be due; and in such case the service of a copy of any summons or other process, or of any order, upon one or more of such copartners, shall be deemed to be a sufficient service upon all."

Partner not to be liable in person for offence of his co-partner, but partnership property liable.

Sect. 14. "In all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders by any

How summonses are to be served.

9. *Wages of Artificers, Labourers, &c.*

1 & 2 Will. IV. c. 37.

justice or justices of the peace, under the authority of this act, if a duplicate or true copy of the same be left at or upon the place used or occupied by such offender or offenders for carrying on his, her, or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders, by his, her, or their right or assumed name or names."

Form of conviction and other proceedings.

Sect. 15. "The justices before whom any person shall be convicted of any offence against this act, or by whom any person shall be committed to the common gaol, in default of a sufficient distress, or for not appearing as a witness or not submitting to be examined, shall cause all such convictions, and the summonses for the attendance of witnesses, and the warrants or orders for such commitments, and the warrant or order for any such distress, to be drawn up in the form or to the effect set forth in the schedule to this act annexed, with such additions or variations as may be necessary for adapting the same to the particular circumstances of the case."

Justices to return convictions to clerk of peace, who is to deliver copies to persons applying.

Sect. 16. "The justices before whom any conviction shall be had under this act shall cause the same to be returned to the next general or quarter sessions of the peace holden for the county or place wherein the offence shall have been committed, and the same shall then and there be delivered to the clerk of the peace, or other person acting as such, to be by him filed among the records of the said court; and such clerk of the peace, or other person acting as such, is hereby required, on the tender and payment to him of the sum of 1*s.*, to grant to any person or persons, on demand, a copy of any such conviction, with a certificate thereupon indorsed or thereunto annexed, that the same is a true and accurate copy of the original conviction returned to such general or quarter sessions as aforesaid."

Convictions not to be quashed for want of form.

Sect. 17. "No conviction, order, or adjudication made by any justices of the peace under the provisions of this act shall be quashed for want of form, nor be removed by *certiorari* or otherwise into any of his majesty's superior courts of record; and no warrant of distress, or of commitments in default of sufficient distress, shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

Application of penalties.

Sect. 18. "Out of any penalty or forfeiture incurred by any offence committed against this act it shall be lawful for the court or justices imposing the same to award any sum to the informer, not exceeding in any case the sum of 20*l.*; and the rest of any such pecuniary penalty or forfeiture shall go to the treasurer of the county in which the offence shall be committed, in aid of the rates of such county: Provided always, that every proceeding whatsoever for any offence against this act shall be commenced within three calendar months after such offence shall have been committed."

What trades within the act.

Sect. 19. "Nothing herein contained shall extend to any artificer, workman, or labourer, or other person engaged or employed in any manufacture, trade, or occupation, excepting only artificers, workmen, labourers, and other persons employed in the several manufactures, trades, and occupations following; (that is to say,) in or about the making, casting, converting, or manufacturing of *iron* or *steel*, or any parts, branches, or processes thereof; or in or about the working or getting of any mines of *coal, ironstone, limestone, salt rock*; or in or about the working or getting of *stone, slate*, or *clay*; or in the making or preparing of *salt, bricks, tiles*, or *quarries*; or in or about the making or manufacturing of any kinds of *nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges*, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of *cutlery*, or of any goods or wares made of *brass, tin, lead, pewter*, or other *metal*, or of any *japanned goods* or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing,

knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of *woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair,* or *silk* manufactures whatsoever, or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another; or in or about the making or otherwise preparing, ornamenting, or finishing of any *glass, porcelain, china,* or *earthenware* whatsoever, or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of *bone, thread, silk,* or *cotton* lace, or of *lace* made of any mixed materials."

9. *Wages of Artificers, Labourers, &c.*

1 & 2 Will. IV. c. 37.

Sect. 20. "Nothing herein contained shall extend to any domestic servant, or servant in husbandry."

Domestics and servants in husbandry.

Sect. 21. "No justice of the peace, being a person also engaged in any of the trades or occupations enumerated in this act, or the father, son, or brother of any such person, shall act as a justice of the peace under this act."

Certain persons not to act as justices.

Sect. 22. "In all cities, boroughs, or corporate towns, where the magistrates for the time being are disqualified by the foregoing clause from administering this act, then and in every such case, and so often as the same shall happen, it shall be lawful for the magistrates of the county in which the offence may be committed (and not disqualified as aforesaid) to administer, and they are hereby authorized and empowered to hear, examine, and determine any offences committed against this act, in any such cities, boroughs, or corporate towns; and it shall be lawful for the complainant to remove the cases of information or complaint from the said cities, boroughs, or corporate towns to any other court of session or petty session not exceeding twelve miles from the place where the offence shall have been committed; any law, charter, usage, or custom to the contrary notwithstanding."

County magistrates to act in cases where those of towns, &c. are disqualified as above.

Sect. 23. "Nothing herein contained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this act the whole or any part of any tenement at any rent to be thereon reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making or contracting to make any stoppage or deduction from the wages of any such artificer, for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such employer; or for or in respect of any money advanced to such artificer for any such purpose as aforesaid: Provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer."

Particular exemptions to the generality of the law.

Sect. 24. "Nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducing or contracting to deduct any sum or sums of money from the wages of such artificers for

Employers may advance money to artificers for certain purposes.

9. *Wages of Artificers, Labourers, &c.*

the education of any such child or children of such artificer; and unless the agreement or contract for such deduction shall be in writing, and signed by such artificer."

1 & 2 Will. IV. c. 37.

Definition of terms.

Sect. 26. "In the meaning and for the purposes of this act, all workmen, labourers, and other persons in any manner engaged in the performance of any work, employment, or operation, of what nature soever, in or about the several trades and occupations aforesaid, shall be and be deemed '*artificers*;' and that within the meaning and for the purposes aforesaid, all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers, shall be and be deemed to be '*employers*:' and that within the meaning and for the purposes of this act, any money or other thing had or contracted to be paid, delivered, or given as a recompence, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and taken to be the '*wages*' of such labour; and that within the meaning and for the purposes aforesaid, any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a '*contract*.'"

To extend over Great Britain.

Sect. 27. "The provisions of this act shall extend over the whole of that part of the United Kingdom of Great Britain and Ireland called Great Britain."

See the Forms, No. 33, &c., *post*.

X. Arbitrations between Masters and Workmen.

5 Geo. IV. c. 96.

By 5 Geo. IV. c. 96, s. 1 (*a*), after reciting that it is expedient that the laws relative to the arbitration of disputes between masters and workmen should be consolidated and amended, and one general law made applicable to every description of trade and manufacture; it is enacted, that the 39 & 40 Geo. III. cc. 90, 106, 41 Geo. III. (United Kingdom), c. 38, and 44 Geo. III. c. 87, shall be and are repealed, save and except in as far as the same may have repealed any prior acts or enactments.

Enumeration of the causes of dispute that may be referred.

Sect. 2. "The following subjects of dispute arising between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the United Kingdom of Great Britain and Ireland, may be settled and adjusted in manner hereafter mentioned; that is to say, disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done, or alleged to have been done to the work, or respecting any delay, or supposed delay, in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to any contract, or to bad materials; cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements of manufacture, or to make any alteration upon the old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for or in respect thereof; disputes respecting the length, breadth, or quality of pieces of goods, or in

(*a*) Intituled "An Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen," dated 21st June, 1824.

the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof; disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length; disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs; disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled; disputes between masters and persons engaged in sizing or ornamenting goods; but nothing in this act contained shall authorize any justice or justices acting as hereafter mentioned, to establish a rate of wages or price of labour or workmanship, at which the workman shall in future be paid, unless with the mutual consent of both master and workman: Provided always, that all complaints by any workman, as to bad materials, shall be made within three weeks [altered by 1 Vict. c. 67, s. 1, *post*, 921, to fourteen days] of his receiving the same; and all complaints arising from any other cause shall be made within six days after such cause of complaint shall arise." (*See* sect. 20, *post*, 919.)

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

Limitation for workmen to lodge their complaints.

Sect. 3. "Whenever such subjects of dispute shall arise as aforesaid, it shall be lawful (*a*) for the master and workman, or either of them, to demand and have an arbitration or reference thereof in manner following; (that is to say,) where the party complaining and the party complained of shall come before, or agree by any writing under their hands to abide by the determination of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, borough, town, or place, within which the parties reside. [altered by 1 Vict. c. 67, s. 2, *post*, 921, to the place where the party complained against resides,] it shall and may be lawful for such justice of the peace or magistrate to hear and finally determine, in a summary manner, the matter in dispute between such parties; but if such parties shall not come before or so agree to abide by the determination of such justice of the peace or magistrate, then it shall be lawful for any such justice or magistrate, and such justice of the peace or magistrate is hereby required, on complaint made before him, and proof by the examination of the party making such complaint, that application has been made to the person or persons against whom such cause of complaint has arisen, or his, her, or their agent or agents, if such dispute has arisen with such agent or agents, to settle such dispute, and that the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, that such cause of complaint has not been done away with within forty-eight hours after such application, to summon before him such person or persons, or agent or agents, on some day, not exceeding three days, exclusive of Sunday, after the making such complaint, giving notice to the person making such complaint of the time and place appointed in such summons for the attendance of such person or persons, agent or agents, as aforesaid; and if at such time and place the person or persons so summoned shall not appear by himself, herself, or themselves, or send some person on his, her, or their behalf, to settle such dispute, or appearing, shall not do away such cause of complaint, then and in such case it shall be lawful for such justice, and he is hereby required, at the request of either of such parties, to nominate arbitrators or referees for settling the matters in dispute; and such justice shall then and there, at such meeting, propose not less than four, nor more than six persons, one half of whom shall be master manufacturers, or agents or foremen of some master manufacturer, and the other half of whom shall be workmen in such manufacture; such respective persons residing in or near to the place where such disputes shall have arisen; out of which

Appointment of referees.

Justice to name them in cases above specified.

(*a*) The clause is perhaps imperative, and precludes the party from suing if an arbitration is demanded. (*See Crisp* v *Bunbury*, 8 *Bing.* 394, 1 *M. & Scott*, 646, *S. C.*; "*Friendly Societies*," Vol. III.)

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

Master to choose one, and workmen the other.

Regulations for appointment of other referees where those appointed refuse or delay to accept the reference, or accepting do not act therein.

master manufacturers, agents, or foremen, the master engaged in such dispute, or his agent, shall choose one, and out of which workmen so proposed, the workman or his agent shall choose another, who shall have full power to hear and finally determine such dispute."

Sect. 4. "In case any or either of the persons so proposed by any such justice shall refuse or delay to accept such arbitration, or accepting shall not act therein, within two days after such nomination, the justice shall proceed to name another or other persons of the descriptions aforesaid, in the room of the person so refusing as aforesaid, to be arbitrator or arbitrators in the place of any such arbitrator or arbitrators so refusing or delaying to accept, or who shall not act; and in every case of a second nomination the arbitrators shall meet within twenty-four hours after the application for the same, and at the same place at which the meeting of the referees first named was appointed, or at some other convenient place, as the justice may appoint; and the expense of every such application for the appointment of a second referee shall be borne and defrayed by the party through whose default, or the default of whose referee, such application is rendered necessary; and the justice making such second appointment shall certify the same in the form for that purpose hereafter set forth, or in some other form to the like effect; and in every case where a second arbitrator shall be appointed as aforesaid, and such second arbitrator shall not attend at the same time and place appointed for settling the matters in dispute, it shall be lawful for the other arbitrator, at such time and place, to proceed by himself to the hearing and determining of the same matters in dispute; and in such case the award of such sole arbitrator shall be final and conclusive as to all matters in dispute submitted to such arbitrator, without being subject to review, appeal, or suspension."

Meeting of referees, notice of which shall be given.

Sect. 5. "The arbitrators or referees being so nominated as aforesaid, the said justice shall thereupon appoint a place of meeting according to the directions of this act, and also a day for the meeting, notice of which nomination, and of the day of meeting, shall thereupon be given by such justice to the persons so nominated arbitrators or referees, and to any party to any such dispute, who may not have attended the meeting before such justice as aforesaid; which appointment shall be by such justice certified in the form following, or in some other form to the like effect; (that is to say,)

Form of a justice's order, certifying nomination of referees.

I, A. B., one of the justices of the peace acting for , do hereby certify, that C. D. and E. F. are duly nominated referees to settle the matters in difference between G. H., of , master manufacturer [or, *agent* or *foreman*, as the case may be], *and I. K., of , weaver* [or otherwise, as the case may be], *pursuant to an act passed in the fifth year of the reign of his* [*present*] *majesty; and that the said referees are hereby directed to meet at , on , the day of , at of the clock in the forenoon* [or, *afternoon*, as the case may be]. *A. B.*

I, A. B., one of the justices of the peace acting for , do hereby certify that the above-named C. D. and E. F. [or, *one of them*, as the case may be], *having refused or delayed to act in the above mentioned reference, L. M. and N. O.* [or, *L. M.* only, as the case may be] *are* [or, *is*] *by me duly nominated referees* [or, *referee*], *together with the above-named C. D.* [or, *E. F.*], *to settle the matters in difference between the above-named G. H. and I. K.; and the said C. D.* [or, *E. F.*], *together with the said L. M.* [or, *the said L. M.* or *N. O.*, as the case may be], *are directed to meet at the place above-mentioned on , the day of , in the year of our Lord , at of the clock in the forenoon* [or, *afternoon*, as the case may be].

A. B.

And the person so appointed as aforesaid shall hear and examine the parties and their witnesses, and determine such dispute within two days after such nomination, exclusive of *Sundays;* and the determination of such arbitrators shall be final and conclusive" (Form (No. 38), *post.*)

Sect. 6. "In all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at or as near as may be to the place where the work shall be carrying on; and in all other cases at or as near as may be to the place or places where the work has been given out."

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

Sect. 7. "If any person so complaining as aforesaid shall not attend, or send some person on his or her behalf, at the time and place appointed by such justice of the peace, for the purpose of naming such persons as aforesaid, such person shall not in such case be entitled to the benefit of this act; and if any person against whom any such complaint shall have been made as aforesaid shall not attend, or send some person on his or her behalf, the justice of the peace shall thereupon nominate a person for him out of such persons so proposed as aforesaid."

Place for the meeting of referees.

Attendance of parties.

Sect. 8. "The said arbitrators and referees shall meet at the time and place fixed by the justice of the peace by whom such referees were appointed, and, shall by inspection of the work in regard to which the dispute may have arisen, by hearing and examining the parties, or any other persons on their behalf, or that attend to give evidence respecting the matters in dispute, upon oath, (which (Form (No. 41), *post.*) the said arbitrators and referees are hereby empowered to administer,) or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to such arbitrators and referees shall appear necessary, proceed to determine the matter or matters in dispute referred to them; and the award to be made by such arbitrators and referees shall be final and conclusive between the parties without being subject to review or challenge by any court or authority whatsoever."

Mode of investigation of complaint by the arbitrators.

Sect. 9. "It shall be lawful for any arbitrator or arbitrators, referee or referees, and he and they are hereby authorized and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before such arbitrator or arbitrators, referee or referees, at the time and place appointed for hearing and determining any such dispute, and which time and place shall be specified in such summons; and if any person so summoned to appear as a witness as aforesaid, shall not appear before such arbitrator or arbitrators, referee or referees, at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness, and give his evidence before such arbitrator or arbitrators, referee or referees, touching the matter of such dispute, then and in every such case it shall be lawful for any one or more of his majesty's justices of the peace acting in and for the county, stewartry, riding, division, barony, city, burgh, town, or place where such dispute shall have arisen, and they are hereby authorized, (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice or justices, of the due service of such summons on every such person, by delivering the same to him, or by leaving the same twenty-four hours before the time appointed for such person to appear before such arbitrator or arbitrators, referee or referees, at the usual place of abode of such person,) by warrant under the hands of any such justice or justices to commit (Form (No. 42), *post,*) [*see also*, sect. 27,] any such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of any such justice or justices, there to remain, without bail or mainprize, for any time not exceeding two calendar months, nor less than seven days, or until such person shall submit himself to be examined, and give his evidence before such arbitrator or arbitrators, referee or referees, as aforesaid: Provided always, that in case such dispute shall be heard and determined before such offender shall submit to be examined, and give evidence as aforesaid, then and in every such case he, she, or they shall be imprisoned the full term of such commitment."

Arrest and commitment of refractory witnesses.

Proviso.

Sect. 10. "In case such arbitrators and referees so appointed cannot agree upon and decide such matter or matters in dispute so referred as

Adjournment of complaint from

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

referees to a justice.

aforesaid, or shall not make and sign their award within three days after the date of the order of such justice, certifying their appointment, then the said arbitrators and referees shall, without delay, go before the justice by whom they were appointed, and in case of his absence or indisposition, before any other of his majesty's justices of the peace acting in and for the county, stewartry, riding, division, barony, city, burgh, town, liberty, or place, and residing nearest to the place where the meeting to settle such dispute shall have taken place, and shall state to such justice or justices who may be present the points in difference between them the said arbitrators and referees, which points in difference the said justice or justices shall, and is and are hereby authorized and required to hear and determine upon the statement of the arbitrators and referees; and the said justice or justices is and are hereby directed and required to settle and determine the matter in dispute with all possible despatch, and in all cases, within the space of two days after the expiration of the time hereby allowed to the arbitrators and referees to make and sign their award; and the determination of such justice or justices shall be final and conclusive between the parties so differing as aforesaid, without being subject to review or challenge by any court whatsoever."

Determination of justice final.

Proceeding where one referee refuses to go before justice.

Sect. 11. "If either arbitrator or referee shall neglect or refuse to go before such justice of the peace in the manner herein directed, it shall and may be lawful for such justice, after summoning the arbitrators to attend him, to determine the matter or matters in dispute upon the statement and representation of either of the arbitrators who shall come before him."

Sect. 12 provides and enacts, "That no justice of the peace being also a master manufacturer or agent shall act as such justice under this act."

Disputes may be adjusted by any other mode of arbitration upon which the parties may agree.

Sect. 13. "As well in all such cases of dispute as aforesaid as in all other cases, if the parties mutually agree that the matter in dispute shall be arbitrated and determined in a different mode to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties, and the same proceedings of distress, sale, and imprisonment, as hereafter mentioned, shall be had towards enforcing such award, (by application to any justice of the peace of the county, stewartry, riding, division, barony, city, town, burgh, or place within which the parties shall reside,) as are by this act prescribed for enforcing awards made under and by virtue of its provisions."

Partners, agents, and servants, to be considered principals.

Sect. 14. "Where any work shall have been delivered to any workman by the agent or servant of any master or masters, to be when finished delivered to such agent or servant; and also where two or more persons shall carry on the business of such manufacture as partners, in every such case respectively the like proceedings shall and may be had and made against such agent, servant, or any partner, and shall be as effectual as if the same had been had and made against the principal, or all the partners: and all the said persons respectively shall obey the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform the same, as if the proceedings had been had against the principal, or against all the partners."

Master not resident may depute another person.

Sect. 15 "It shall be lawful in all cases for any master or workman, by writing under his hand, to authorize any person to act for him in submitting to arbitration and attending arbitrators or justices touching the matter of any arbitration."

Provision in case master becomes bankrupt after proceedings commenced.

Sect. 16. "In all cases where any proceedings may be had against a master or masters under this act, or where such proceedings shall have been commenced, and the master or masters shall become or be bankrupt, or any assignment of his or their estate or effects shall have been made under the said bankruptcy, or otherwise by deed or in law, the factor or trustee upon, or the assignee or assignees of such estate or effects, shall be liable to the proceedings authorized by this act against

the master or masters, as fully as the master or masters was or were before the bankruptcy or assignment; and such proceedings may be commenced or carried on against such factor, trustee, assignee or assignees, who shall fulfil and abide by the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for wilfully refusing or delaying to abide by or perform the same, as if the proceedings had been had against the master or masters before his or their bankruptcy, or the assignment of his or their estate or effects; provided that all sums of money to be paid in pursuance of such award or orders shall be recoverable only out of the estate or effects of such master or masters, and not out of the proper money of such factor, trustee, assignee, or assignees."

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

Sect. 17. "Where any married woman, or infant under the age of twenty-one years, shall have cause of complaint in any of the cases provided for by this act, against any master or masters, his or their agent or servant, or factor or trustee, or assignee or assignees as aforesaid, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the husband of such married woman, and of the father, or, if dead, of the mother, or if on the death of both parents, of any of the kindred of any such infant, or of the surety or sureties in any indenture of apprenticeship of any such infant, being an apprentice, or of any person nominated by such infant, if he or she shall not have parent, kindred, or surety; and all such proceedings shall be as effectual, valid, and binding, as if such married woman was sole, and such infants were of full age, and pursued by themselves the remedies provided by this act."

Where complainant a married woman or infant.

Sect. 18. "With every piece of work given out by the manufacturer to a workman to be done, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the said parties shall mutually agree upon; and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein or respecting the same."

Tickets of particulars to be given out with work.

Sect. 19. "A duplicate of every such note or ticket shall be made and kept by the master or agent delivering the same, which duplicate shall be evidence of all the matters and things therein contained, in case the workman shall not produce to the arbitrators, or the said justice, as the case may be, the said note or ticket so delivered to him with the said work."

Duplicates of such tickets.

Sect. 20. "It shall not be allowable to any manufacturer, who shall have received into his possession any article without objection made within twenty-four hours by himself, or his clerk or foreman, afterwards to make any complaint on account of work so received."

Manufacturers receiving articles not to complain afterwards.

Sect. 21. "If the parties by and between whom the said reference shall take place as aforesaid, shall think it expedient, or be desirous to extend the time hereby limited for the making the award or umpirage, it shall and may be lawful for them to extend the same accordingly by indorsement, according to the Form [(No. 39), *post*,] in the schedule hereunto annexed, on the back of the order of the justice of peace, certifying the appointment of the referees, to be signed by both of them in the presence of one or more credible witness or witnesses."

Extension of time limited for making award.

Sect. 22. The award or umpirage to be made upon any reference demanded under this act, shall and may be drawn up and written at the foot or upon the back of the said order, certifying the appointment of the referees, according to the Form [(No. 38), *post*,] in the schedule hereunto annexed."

Form of award in schedule annexed.

Sect. 23. "Upon fulfilment of the award or umpirage, the same shall be acknowledged by the party in whose behalf the same was made, by an acknowledgment at the foot of the said award, in the Form [(No. 40), *post*,] of the schedule hereunto annexed, which, with the award, shall thereupon be delivered to the party fulfilling the same."

On award being fulfilled, fulfilment to be acknowledged.

Sect. 24. "If any party shall refuse or delay to fulfil an award under

Performance of

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

award may be enforced by distress; and failing that, the party refusing shall be imprisoned.

this act, for the space or term of two days after the same shall have been reduced into writing, it shall be lawful for any such justice as aforesaid, on the application of the party aggrieved, and he is hereby required, by warrant under his hand, according to the Form [(No. 43), *post*,] of the schedule hereunto annexed, or in some other form to the like effect, to cause the sum and sums of money directed to be paid by any such award, to be levied by distress and sale of any goods and chattels of the person or persons liable to pay the same, together with all costs and charges attending such distress and sale, such sale to take place within such time, not exceeding five days, as the said justice shall think proper; and the overplus, if any, to arise by such sale, to be rendered to the owners of the goods and chattels distrained; and in case it shall appear by any return to such warrant, that no sufficient distress can be readily had, which return may be be in the Form [(No. 44), *post*,] contained in the schedule hereunto annexed, or in some other form to the like effect, it shall be lawful for any such justice as aforesaid, and he is hereby required, by warrant under his hand according to the Form [(No. 45), *post*,] of the schedule hereunto annexed, or in some other form to the like effect, to commit the person or persons so liable as aforesaid to the common gaol, or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding three months."

In certain cases the warrant of distress shall be withheld, and the defaulter committed to prison.

Sect. 25. "And whereas cases may occur where the recovery of such sum or sums of money by distress and sale of the goods and chattels of the defaulter may appear to the justice or justices of the peace by whom the warrant is to be issued to be attended with consequences ruinous, or in an especial manner injurious, to the defaulter and his family: to prevent which consequences, be it further enacted, That the said justice or justices, in all such cases, shall withhold such warrant, and commit the defaulter to the common gaol, or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding three months; such commitment to be in the Form [(No. 46), *post*,] or to the effect of the form in the schedule to this act annexed."

On payment of sum awarded, with costs, party discharged.

Sect. 26. "Where any person shall be committed to prison for refusing or delaying to fulfil an award as aforesaid, and such person shall, at any time during the period of his or her imprisonment, pay to the governor or keeper of the prison the full amount of the sum awarded, with all reasonable expenses incurred through such refusal or delay, it shall be lawful for such governor or keeper of such prison, and he is hereby required, forthwith to discharge such person from his custody."

Form of warrant of commitment in form in schedule.

Sect. 27. "The justice or justices by whom any person or persons shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause the warrant or order for such commitment to be drawn up in the Form [(No. 42), *post*,] or to the effect set forth in the schedule to this act"

No appeal or *certiorari*.

Sect. 28. "No appeal or *certiorari* shall lie against any proceedings under this act."

Want of form.

Sect. 29. "No proceedings under this act shall be invalid for want of form."

Fees for proceedings under this act.

Sect. 30. "The following and no higher fees shall be allowed to be taken for any proceeding under this act; (that is to say,)

To the clerk of the justice or justices:

For each summons, 2*d.*; for every oath or affirmation, 3*d.*; for drawing and entering the order, 4*d.*; for every warrant, 6*d.*

To the constable or other peace-officer.

For service of summons or order, 4*d.*; for executing warrant of distress and sale of goods, 1*s.*; for custody of goods distrained, *per diem*, 3*d.*; for every mile he shall travel, 3*d.*; for every caption, 6*d.*

And a table of fees, signed by the clerk to such justice or justices

shall be hung up in every place where any general or quarter session, or petty or other sessions of the peace, shall be held."

10. *Arbitrations between Masters and Workmen.*

5 Geo. IV. c. 96.

Sect. 31. "All costs, time, and expenses attending the application to justices to be made under this act, and of the arbitration pursuant thereon, shall be settled by the arbitrators or arbitrator by whom such dispute shall be settled; and where the same shall be determined by any justice of the peace, pursuant to this act, then the costs, time, and expenses aforesaid shall be settled by such justice; and where the arbitrators appointed as aforesaid cannot agree as to the costs, time, and expenses to be allowed, the same shall be settled by the justice or justices of the peace by whom the said arbitrators were named; and in case of his absence or indisposition, by any justice of the peace for the same county, stewartry, riding, division, barony, city, burgh, liberty, town, or place nearest to the place at which the arbitrators met to settle the dispute: Provided always, that no master manufacturer, his foreman or agent, shall in any case be allowed for costs, time, or expenses, by the said justice or justices, unless it shall appear to him or them that the proceedings of the workmen were vexatious and oppressive."

Costs and expenses, how to be settled.

Sect. 32. "Every agreement, submission, award, ticket, matter, or thing, under and by virtue of this act, or relating to any other mode of arbitration as aforesaid, shall and may be drawn up and written upon unstamped paper."

Proceedings exempt from stamp duty.

Sect. 33. "No action shall be brought against any arbitrator, justice of the peace, constable, headborough, or other officer, or against any other person or persons whomsoever, for any matter or things whatsoever done or committed under, or by virtue, or in the execution of this act, unless such action shall be brought within six calendar months next after the doing or committing of such matter or thing."

Limitation of actions.

Sect. 34. "If any action or suit shall hereafter be commenced or prosecuted against any person or persons for any thing done under, by virtue, or in the execution of this act, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited, or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant or defendants, such defendant or defendants shall recover his, her, or their full costs, and for which he, she, or they shall have like remedy as in cases where costs by law are given to defendants."

General issue.

Costs.

Sect. 35. "Nothing in this act contained shall extend, or be construed to extend to repeal, abridge, annul, or make void any of the clauses, provisions, remedies, or powers contained in any law or statute now in force, and not repealed by this act."

Proviso for acts not hereby repealed.

1 Vict. c. 67.

By 1 Vict. c. 67, s. 1, reciting the passing of the 5 Geo. IV. c. 96, and that "it is provided by the said act that all complaints under the same by any workman for any cause, except as to bad materials, shall be made within six days after such cause of complaint shall arise; but the said period of six days has been found too short for the purpose thereby intended;" it is therefore enacted that the same be extended to fourteen days.

Period for making complaints extended.

Sect. 2. "And whereas it is enacted by the said act, that various differences under the same shall be subject as therein mentioned to the adjudication of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place within which the parties reside: And whereas many cases have arisen where no justice of the peace or magistrate could be found who has jurisdiction where both of the parties differing as aforesaid reside; in consequence whereof it has been doubted whether the above beneficial enactment can in such cases take effect; and for the remedy thereof it is necessary that the jurisdiction and powers which are by the said act conferred on the justices or magistrates of the district where both parties reside shall in future be exercised by the justices or magistrates of the district where the party complained against resides; be it enacted, That in the place of the justices or magistrates of the district where both parties reside the justices or magis-

Justices having jurisdiction where the party complained against resides, to have jurisdiction in the matter of the said act.

10. *Arbitrations between Masters and Workmen.*

1 Vict. c. 67.

trates of the district where the parties complained against reside shall have the said jurisdiction and powers; and whatever acts and duties are by the said act required to be done by the first-mentioned justices or magistrates, or any one of them, shall be done by the last-mentioned justices or magistrates, or by any one of them; and the said act shall in all respects be construed as if the words 'where the party complained against resides' had been originally inserted in the third section of the said act instead of the words 'within which the parties reside.'"

Interpretation of "justice."

Sect. 3. "That wherever the expression 'justice of the peace' occurs in the said act it shall be construed to mean 'magistrate.'"

XI. Combinations amongst Masters or Workmen.

Offence at common law.

As to the offence at common law, *see* "*Conspiracy*," Vol. I.

Repeal of acts.

By the 5 Geo. IV. c. 96, s. 1, the statutes 39 & 40 Geo. III. c. 106, and 41 Geo. III (U. K.) c. 38 (which amended the 39 & 40 Geo. III. c. 106), are repealed, save and except so far as the same may have repealed any prior act or enactment.

By the 6 Geo. IV. c. 129, intituled "An Act to repeal the Laws relating to the Combination of Workmen, and to make other Provisions in lieu thereof," [dated 6th July, 1835,] reciting that, "Whereas an act was passed in the last session of parliament, intituled 'An Act to repeal the Laws relative to the Combination of Workmen, and for other Purposes therein mentioned,' by which act various statutes and parts of statutes, relating to combinations among workmen, for fixing the wages of labour, and for regulating and controlling the mode of carrying on any manufacture, trade, or business, was repealed, and other provisions were made for protecting the free employment of capital and labour, and for punishing combinations interfering with such freedom, by means of violence, threats, or intimidation; and whereas the provisions of the said act have not been found effectual; and whereas such combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them; and whereas it is expedient to make further provision, as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers, and for that purpose to repeal the said act, and to enact other provisions and regulations in lieu thereof:" it is enacted,

Repealed.

"That from and after the passing of this act, the said recited act of the last session of parliament shall be and the same is hereby repealed."

Certain acts shall stand and remain repealed, so far as relates to combination of workmen.

Sect. 2. "From and after the passing of this act, so much of an act, [33 Edw. I. stat. 1,] concerning conspirators who do confeder or bind themselves by oath, covenant, or other alliance, as relates or extends to combinations or conspiracies of workmen or other persons to obtain an advance of or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or to combinations or conspiracies of masters, manufacturers, or other persons, to lower or fix the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or to oblige workmen to enter into work; and also so much of the 3 Hen. VI. c. 1, as relates to the annual congregations and confederacies made by masons in their general chapters assembled; and also 33 Hen. VIII. stat. 1, c. 9, (I.); also 2 & 3 Edw. VI. c. 15; and also 5 Parl. Jac. I. (S.); also 7 Parl. Jac I. (S.); also 5 Parl. Mary, (S.); also 7 Parl. Jac. VI. (S.); also so much of 13 & 14 Car. II. c. 15, s. 10, as provides and enacts, that the corporation of silk-throwers should not, by virtue of that act, nor any

thing therein contained, make any orders, ordinances, or by-laws, to set any rates or prices whatsoever upon the throwing of silk, to bind or enforce their members to work at; also 7 Geo. I. stat. 1, c. 13, ss. 4, 6; also so much of 12 Geo. I. c. 34, ss. 1, 8, as provides that contracts, covenants, or agreements, by-laws, ordinances, rules, and orders, made or entered into by or between persons brought up in, or professing, using, or exercising the art and mystery of a woolcomber or weaver, or journeyman woolcomber or journeyman weaver, as therein mentioned, shall be illegal, null and void, and as punishes woolcombers, weavers, journeymen woolcombers and weavers, and other persons concerned in the woollen manufactures, for keeping up, continuing, acting in, making, entering into, signing, sealing, or being knowingly concerned in, presuming, or attempting to put in execution such agreements, by-laws, ordinances, rules, or orders, as therein mentioned, and as provides that the provisions of the said act of the twelfth of George the First, just recited, shall extend to the persons therein mentioned; also part of 3 Geo. II. c. 14, (Ireland,) as declares illegal, null, and void, the contracts, covenants, agreements, by-laws, ordinances, rules, and orders, therein mentioned, and makes it an offence to keep up, continue, act in, make, enter into, sign, seal, or be knowingly concerned therein, and to presume, or to attempt to put the same into execution, as therein mentioned; also part of 17 Geo. II. c. 28, (Ireland); also so much of 22 Geo. II. c. 27, s. 12, as extends those provisions of the said act of the twelfth of George the First herein mentioned, to the persons therein mentioned; also part of 29 Geo. II. c. 33, s. 1, as relates to the making of rates for the payment of wages, continuing and altering and notifying them as therein mentioned; also part of 3 Geo. III. c. 17, (Ireland); also part of 3 Geo. III. c. 34, (Ireland); also 8 Geo. III. c. 17; also part of 11 & 12 Geo. III. c. 18, (Ireland,) as relates to the meetings and assemblies therein mentioned, the administering and taking oaths and declarations, to the tickets, certificates, advertisements, and writings, and to the rules, orders, agreements, and regulations, and to the combinations and agreements to ascertain or fix the price of wages, labour, or workmanship, or not to work, and as relates to the refusal or neglect, by persons not in actual service, to work on application made, and as relates to the detection and discovery of assemblies and combinations for any of the above-recited purposes; also part of 11 & 12 Geo. III. c. 33, (Ireland); also so much of 13 Geo. III. c. 68, ss. 1 to 3 (*a*), as relates to settling, regulating, ordering, and declaring the wages and prices of work, and the notification thereof, and makes it an offence to deviate from such settlement, regulation, order, and declaration, or to ask, receive, or take more or less wages, or larger or less prices, than shall be so settled, or to enter into combinations, or for that purpose to decoy or solicit, or to assemble, as therein mentioned, and as relates to the detection of such offences, and as makes it an offence to retain or employ journeymen weavers out of the limits therein mentioned, or to give, allow, or pay, or cause to be given, allowed or paid, more or less wages than shall be settled, as therein mentioned; also so much of 17 Geo. III. c. 55, ss. 3, 4, as relates to the keeping up, acting in, making, entering into, signing, sealing, or being knowingly concerned in the contracts, covenants, or agreements, by-laws, ordinances, rules, or orders of the clubs, societies, or combinations therein mentioned, or the presuming or attempting to put the agreements, by-laws, ordinances, rules, or orders, in execution, or to the attending meetings, clubs, societies, or combinations, or to the summoning, giving notice to, or calling upon, collecting, demanding, or receiving, persuading, enticing, or inveigling, or endeavouring to persuade, entice, or inveigle, paying money, making or entering into subscriptions or contributions as therein mentioned; also part of 19 & 20 Geo. III. c. 19, (Ireland); also part of 19 & 20 Geo. III. c. 24, (Ireland); and part of 19 & 20 Geo. III. c. 36, (Ireland); and part of 25 Geo. III. c. 48, (Ireland); also so much of 32 Geo.

11. *Combinations amongst Masters or Workmen.*

6 Geo. IV. c. 129.

(*a*) It seems that this act is wholly repealed by 5 Geo. IV. c. 66.

11. *Combinations amongst Masters or Workmen.*

6 Geo. IV. c. 129.

III. c. 44, s. 1 (*a*), as extends the provisions of the said act of the thirteenth of George the Third, hereby repealed, to the persons therein mentioned; also 36 Geo. III. c. 11; also so much of 39 Geo. III. c. 56, s. 2, as relates to the fixing and appointing of hire and wages; also 39 & 40 Geo. III. c. 106, except ss. 18—22, excepting so much thereof as relates to the adjustment of disputes between masters and workmen, as therein mentioned; also so much of 43 Geo. III. c. 86, ss. 1 to 4, and s. 10, as makes illegal and void contracts, covenants, and agreements, for obtaining an advance of wages, or for lessening or altering the hours or time of working, or for decreasing the quantity of work, or for controlling or affecting the conduct or management of any manufacture, trade, or business, and as prohibits the making or entering into, or being concerned in the same, and as punishes persons for so doing, and as relates to the combinations therein mentioned, and as relates to endeavouring by gift, persuasion, or solicitation, to prevent persons hiring themselves, and as relates to attending the meetings therein mentioned, or endeavouring to induce the attendance of others, and collecting, demanding, asking, or receiving money, for the purposes therein mentioned, and as relates to persuading, enticing, soliciting, or endeavouring to induce others to enter into or be concerned in the combinations therein mentioned, and to paying money, making or entering into subscriptions or contributions, and to oaths and declarations, and to tickets, certificates, and tokens, and to contributions* supporting and maintaining others, as therein mentioned, and as punishes persons for permitting assemblies in their houses or apartments, as therein mentioned; also 47 Geo. III. s. 1, c. 43; also so much of 57 Geo. III. c. 122, s. 3, as did extend to Scotland and Ireland any of the provisions of the acts intended to be repealed by the said recited act of the last session of parliament; and all enactments in any other statutes or acts which immediately before the passing of the said recited act of the last session of parliament were in force throughout or in any part of the United Kingdom of Great Britain and Ireland, relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or relative to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working or to increase the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or relative to fixing the amount of the wages of labour, or relative to the obliging workmen not hired to enter into work, and every enactment enforcing or extending the application of any of the said several enactments so repealed, shall, notwithstanding the repeal of the said recited act of the last session of parliament, still be and remain repealed, except only so far as the same or any of them may have repealed any former act or enactment."

* *Sic.*

And all acts relative to combination of workmen or masters as to wages, time of working, or quantity of work, &c., repealed.

Exception.

Sect. 3. "From and after the passing of this act, if any person shall by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman, or other person hired or employed in any manufacture, trade, or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished, or prevent or endeavour to prevent any journeyman, manufacturer, workman, or other person not being hired or employed from hiring himself to, or from accepting work or employment from any person or persons: or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or

Compelling journeymen to leave employment, or to return work unfinished;

preventing hiring themselves;

compelling them to belong to clubs, &c.;

or to pay fines;

(*a*) It seems that this act is wholly repealed by 5 Geo. IV. c. 66.

association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions, or regulations made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants; every person so offending, or aiding, abetting, or assisting therein, being convicted thereof, in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding three calendar months."

11. *Combinations amongst Masters or Workmen.*

6 Geo. IV. c. 129.

or to alter mode of carrying on business.

Punishment.

Sect. 4. "This act shall not extend to subject any persons to punishment, who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, trade, or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours of time for which he or they will work, in any manufacture, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing; any law or statute to the contrary notwithstanding."

Proviso for meetings for settling rates of wages to be received, or hours of work to be employed by the persons meeting.

Sect. 5. "This act shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, workmen, or servants, for their work, or the hours or time of working in any manufacture, trade, or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, workmen, or servants, for their work or the hours or time of working in any manufacture, trade, or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding."

Proviso for meetings for rates of wages, &c., to be paid by masters to journeymen, &c.

Sect. 6. "All and every persons and person who shall or may offend against this act, shall and may, equally with all other persons, be called upon and compelled to give his or her testimony and evidence as a witness or witnesses on behalf of his majesty, or of the prosecutor or informer upon any information to be made or exhibited under this act, against any other person or persons not being such witness or witnesses as aforesaid; and that in all such cases every person having given his or her testimony or evidence as aforesaid, shall be and is hereby indemnified of, from, and against any information to be laid, or prosecution to be commenced, against him or her, for having offended in the matter wherein or relative to which he, she, or they shall have given testimony or evidence as aforesaid."

Offenders compelled to give evidence.

Indemnified.

Sect. 7, "for the more effectually enforcing and carrying into execution the provisions of this act," enacts, "That on complaint and information on oath before any one or more justice or justices of the peace, of any offence having been committed against this act, within his or their respective

Justices may summon offenders.

11. *Combinations amongst Masters or Workmen.*

6 Geo. IV. c. 129.

Not appearing, warrants may be issued.

jurisdictions, and within six calendar months before such complaint or information shall be made, such justice or justices are hereby authorized and required to summon the person or persons charged with being an offender or offenders against this act, to appear before any two such justices at a certain time or place to be specified; and if any person or persons so summoned shall not appear according to such summons, then such justices, (proof on oath having been first made before them of the due service of such summons upon such person or persons, by delivering the same to him or them personally, or leaving the same at his or their usual place of abode, provided the same shall be so left twenty-four hours at the least before the time which shall be appointed to attend the said justices upon such summons,) shall make and issue their warrant or warrants for apprehending the person or persons so summoned, and not appearing as aforesaid, and bringing him or them before such justices; or it shall be lawful for such justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same, upon such complaint and information as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons by such information charged to have offended against this act, and bringing him or them before such justices; and upon the person or persons complained against appearing upon such summons, or being brought by virtue of such warrant or warrants before such justices, or upon proof on oath of such person or persons absconding, so that such warrant or warrants cannot be executed, then such justices shall and they are hereby authorized and required forthwith to make inquiry touching the matters complained of, and to examine into the same by the oath or oaths of any one or more credible person or persons, as shall be requisite, and to hear and determine the matter of every such complaint, and upon confession by the party, or proof by one or more credible witness or witnesses upon oath, to convict or acquit the party or parties against whom complaint shall have been made as aforesaid."

On their appearance, or proof (on oath) of absconding.

Proceedings.

Justices may summon witnesses.

Sect. 8. "It shall be lawful for the justices of the peace before whom any such complaint and information shall be made as aforesaid, and they are hereby authorized and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before such justices, at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and if any person or persons so summoned to appear as a witnses or witnesses as aforesaid, shall not appear before such justices, at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness or witnesses, and give his or their evidence before such justices, touching the matter of such complaint, then and in every such case it shall be lawful for such justices, and they are hereby authorized (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice of the peace, of the due service of such summons on every such person, by delivering the same to him or her, or by leaving the same twenty-four hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person), by warrant under the hands of such justices, to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, there to remain without bail or mainprize, for three calendar months, or until such person or persons shall submit to be examined and give evidence before such justices as aforesaid."

Non-appearance, &c.

Proceedings.

Punishment.

Form of convictions, &c.

Sect. 9. "The justices before whom any person or persons shall be convicted of any offence against this act, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions and the warrants or orders

for such commitments, to be drawn up in the form or to the effect set forth in the schedule to this act annexed."

11. *Combinations amongst Masters or Workmen.*

Sect. 10. "The justices before whom any such conviction shall be had, shall cause the same (drawn up in the form or to the effect hereinbefore directed) to be fairly written on parchment, and transmitted to the next general sessions or general quarter-sessions of the peace to be holden for the county, riding, division, city, liberty, town, or place wherein such conviction was had, to be filed amongst the records of the said general sessions or general quarter-sessions; and in case any person or persons shall appeal, in manner hereinafter mentioned, from the judgment of the said justices, to the said general sessions or general quarter-sessions, the justices in such general sessions or general quarter-sessions are hereby required, upon receiving such conviction, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this act."

6 Geo. IV. c. 129.

Convictions to be transmitted to sessions, to be filed.

Sect. 11. "In Scotland all prosecutions under this act may be insisted on at the instance of the public prosecutor, and may be judged of, either by two justices of the peace, or by the sheriff of the county within which the offence may have been committed."

Scotland.

Sect. 12. "If any person convicted of any offence or offences punishable by this act, shall think himself or herself aggrieved by the judgment of such justices, before whom he or she shall have been convicted, such person shall have liberty to appeal from every such conviction to the next court of general sessions or general quarter-sessions of the peace which shall be held for the county, riding, division, city, liberty, town or place wherein such offence was committed; and that the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall immediately enter into recognizances before such justices (which they are hereby authorized and required to take), himself in the penal sum of 10*l.*, with two sufficient sureties in the penal sum of 10*l.* of lawful money of Great Britain, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next general sessions or general quarter-sessions, and to pay such costs as the said court shall award on such occasion; and the justices in the said next court of general sessions or general quarter-sessions are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party, which decision shall be final; and if, upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall immediately be committed by the said court to the common gaol or house of correction, without bail or mainprize, according to such conviction, and for the space of time therein mentioned."

Appeal.

Security to prosecutor.

Costs.

Imprisonment.

Sect. 13. "No justice of the peace, being also a master in the particular trade or manufacture, in or concerning which any offence is charged to have been committed under this act, shall act as such justice under this act."

No master to act as justice.

XII. Forms.—(*List of.*)

INFORMATION on 32 Geo. III. c. 56, s. 1, for personating: Master and giving a false Character, (No. 1.)

The like, on 32 Geo. III. c. 56, s. 2, for falsely asserting that a Servant was in a particular Service, (No. 2.)

The like, on 32 Geo. III. c. 56, s. 3, for falsely asserting that the Servant was discharged at another time, or that he had not been hired in a previous Service, (No. 3.)

The like, on 32 Geo. III. c. 56, s. 4, against a Servant offering himself with a false Certificate of Character, (No. 4.)

12. *Forms.* INFORMATION on 20 Geo. II. c. 19, and 4 Geo. IV. c. 34, s. 5, of a Workman to recover Wages, (No. 5.)—SUMMONS of a Master or Employer thereon, (No. 6.)—ORDER of Payment of Wages thereon, (No. 7.)—WARRANT of Distress thereon, (No. 8.)

The like, on 20 Geo. II. c. 19, 6 Geo. III. c. 25, and 4 Geo. IV. c. 34, s. 3, of a Master against a Workman for Misbehaviour, (No. 9.)—WARRANT thereon, (No. 10.)—ORDER thereon, and COMMITMENT of Workman, abating his Wages during Confinement, (No. 11.)—or ORDER thereon, abating his Wages instead of Confinement, (No. 12.)—or ORDER thereon, discharging him, (No. 13.)

The like, on 20 Geo. II. c. 19, s. 2, of Workman against Master for ill-Usage, (No. 14.)—SUMMONS of Master thereon, (No. 15.)—DISCHARGE of Workman thereon, (No. 16.)

The like, on 20 Geo. II. c. 19, 6 Geo. III. c. 25, s. 4, and 4 Geo. IV. c. 34, s. 3, against a Workman absenting himself from his Service before Contract completed, (No. 17.)—WARRANT thereon, (No. 18.)—ORDER and COMMITMENT thereon, (No. 19.)—ORDER thereon, abating Wages only, or discharging Workman, (No. 20.)

The like, on 4 Geo. IV. c. 34, s. 3, against Manufacturers, Labourers, or others, for not entering into Service according to written Contract, (No. 21.)

CONVICTION on 22 Geo. II. c. 27, s. 1, and 17 Geo. III. c. 56, s. 1, for embezzling materials, &c. (No. 22.)

The like, on 22 Geo. II. c. 27, s. 2, and 17 Geo. III. c. 56, s. 3, for buying Materials. (No. 23.)

The like, for receiving them in pledge, &c. (No. 24.)

The like, on 17 Geo. III. c. 56, s. 5, for selling or pawning Materials, (No. 25.)

The like, on 22 Geo. II. c. 27, s. 7, and 17 Geo. III. c. 56, s. 7, for not returning Materials unused, (No. 26.)

The like, on 17 Geo. III. c. 56, s. 8, for neglecting Work, (No. 27.)

The like, for taking in work for others, (No. 28.)

The like, on 17 Geo. III. c. 56, s. 9, for receiving Materials in a fictitious Name. (No. 29.)

The like, for giving them to others, (No. 30.)

The like, on 17 Geo. III. c. 56, s. 10, for having purloined Woollen, &c. Materials in possession, without giving good Account thereof, (No. 31.)

The like, where the Justices appoint a time for Defendant to produce Persons to account for the Defendant's Possession of the Materials in like Stat. s. 12, (No. 32.)

CONVICTION under the 1 & 2 Will. IV. c. 37, for paying Wages of Artificers in Goods, and other Offences against that Act, (No. 33.)—SUMMONS to Witness in such a case, (No. 34.)—WARRANT of Commitment of a Witness in same case, (No. 35.)—WARRANT to distrain for Forfeiture in same case, (No. 36.)—COMMITMENT for want of Distress in same case, (No. 37.)

ARBITRATIONS, &c. on 5 Geo. IV. c. 96,—Award to be written at Foot or Back of Order of Justices certifying the Reference, (No. 38.)—INDORSEMENT of Enlargement of Time for Award, (No. 39.)—ACKNOWLEDGMENT of Fulfilment of Award, to be written at Foot or Back thereof, (No. 40.)—OATH to be administered by Arbitrators or Justice to the Parties and Witnesses, (No. 41.)—COMMITMENT of a Witness, (No. 42.)—WARRANT of Distress, (No. 43.)—CONSTABLE'S Return thereto, (No. 44.)—COMMITMENT thereon, (No. 45.)—COMMITMENT where Warrant of Distress withheld, (No. 46.)

CONVICTION and Commitment on 6 Geo. IV. c. 129, relative to Combinations, &c., (No. 47.)

COMMITMENT under like Statute of a Person summoned as a Witness, (No. 48.)

(1.) Information for personating master, and giving false character of a servant, on 3 & Geo. III. c. 56, s. 1 (a).

—— } *Be it remembered, that on the day of , in the year of*
to wit. } *our Lord , at, &c., N. O. of, &c., a credible witness in this behalf, personally cometh before us, J. P. and K. L., two of her majesty's justices of the peace in and for the said [county], and on his oath informeth us, that heretofore, to wit, on, &c., at, &c., one E. F. having offered himself to be hired as a servant into the service of the said N. O., C. D. of , in the*

(a) *Ante*, p. 860. *See* Forms, *Arch. Forms of Com. and Conv.* 268. The statute gives the formal parts of the conviction.

said county, [*labourer*,] *did then and there falsely personate one G. H., the late* [*master*] *of the said E. F., and did then and there personally* [or, *in writing*] *give the said N. O. a false and counterfeited character of the said E. F., contrary to the form of the statute in such case made and provided. Whereby, &c.* [as usual, to the end. See the 32 Geo. III. c. 56, s. 1, *ante*, 860. Penalty, 20*l.*: half to the informer and half to the poor of the parish. *Id.* s. 6.] 12. *Form.*

The statute, s. 9, gives the formal parts of the conviction. See it, *ante*, 862. Conviction.

Commence as in preceding Form.—State the offence thus:] *That C. D., of, &c., on, &c., at, &c., did knowingly and wilfully pretend and falsely assert to the said N. O., in writing, that one E. F. had been hired and retained by him, the said C. D., as a* [*servant*]; *whereas, in truth and in fact, the said E. F. was never so hired or retained by the said C. D. as a* [*servant*] [or, *that one E. F. had been hired and retained by him the said C. D. as a* [*servant*], *and had served him, the said C. D., for the space of years; whereas, in truth and in fact, the said E. F. had been retained by and had served the said C. D. as such* [*servant*], *as aforesaid, for the space of* [*one year and two months*] *only*; [or, *that one E. F. had been hired and retained by the said C. D. in the situation and capacity of a* [*footman*], *and had served him, the said C. D., as a* [*footman*], *as aforesaid; whereas, in truth and in fact, the said E. F. never was hired or retained by the said C. D. in the situation or capacity of a* [*footman*], *or served him, the said C. D., as a* [*footman*], *but was hired and retained him, and served the said C. D. in the capacity of a* [*labourer*] *only; contrary to the form of the statute in such case made and provided. Whereby, &c.* [Conclude as usual.] (2) Information for falsely asserting that a servant was in a particular service &c., on 32 Geo. III. c. 56, s. 2 (*a*).

The statute prescribes the formal parts of the conviction; *see ante*, 862.

Commence as in Form, No. 1.—State the offence thus:] *That C. D., of, &c., on, &c., at, &c., did knowingly and wilfully pretend, and falsely did assert* [*in writing*], *that one E. F., formerly a* [*servant*] *of the said C. D., was discharged by the said C. D., and had left his service on, &c.; whereas, in truth and in fact, the said E. F. was discharged by, and had left the service of, the said C. D. on, &c.* [or, *that one E. F. had not been hired or employed in any previous service; whereas, in truth and in fact, the said C. D. then well knew that the said E. F. had previously been hired and employed in the service of one G. H.; and whereas, in truth and in fact, the said E. F. had previously been so hired and employed in the service of the said G. H.*]; *contrary to the form of the statute in such case made and provided. Whereby, &c.* [Conclude as usual.] (3.) Information for falsely asserting that the servant was discharged, or that he had not been hired in a previous service, on 32, Geo. III. c. 56, s. 3.

The statute gives the formal parts of this conviction; *see ante*, 862.

Commence as in Form, No. 1.—State the offence thus:] *That C. D., of, &c., on, &c., at, &c., did offer himself as a servant to the said N. O.; he, the said C. D., then and there asserting and pretending to the said N. O. that he had served in the service of one G. H.; whereas, in truth and in fact, he had never actually served in the service of the said G. H.* [or, *with a false, forged, and counterfeited certificate of character, purporting to be the certificate of one G. H., and stating that, &c.; whereas, in truth and in fact, the same was not the certificate of the said G. H.; and whereas, in truth and in fact, &c.*]; *contrary to the form of the statute in such case made and provided. Whereby, &c.* [Conclude as usual.] (4.) Information against a servant offering himself with a false certificate of character, on 32 Geo. III. c. 56, s. 4.

The statute gives the formal parts of the conviction: *see ante*, 862.

—— } *The information and complaint of A. S., late of , in the county*
to wit. } *aforesaid, husbandman* [as the case may be; *ante*, 872]. *exhibited before me, J. P., esq., one of her majesty's justices of the peace in and for the* (5.) Information of a workman, &c. for wages, on 20 Geo. II. c. 19, and 4 Geo. IV. c. 34, s. 5 (*b*).

(*a*) *Ante*, p. 861. The statute gives the formal parts of the conviction.

(*b*) *Ante*, p. 872. To give the justice jurisdiction, the wages in question must not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, &c.; *see ante*, p. 873.

12. *Forms.* *said county, the day of , in the year ; who, on his oath, saith,*

That at Whitsuntide last [or on, &c., the real time], *at , he was hired and employed by A. M. of , aforesaid, in the county aforesaid* [*former*], *to be his servant in husbandry* [or, *artificer, handicraftsman, miner, &c.*, as the case may be], *for a certain term, to wit, the term of one half-year, then next following* [as the case shall be], *for the wages of ; that he, the said A. S., hath duly performed the said service* (*a*); *and that he, the said A. M., refuseth to pay to him, the said A. S., the wages justly due unto him for the said service;* and thereupon he, the said A. S., prayeth that justice may be done, and that the said A. M. may be summoned before me, the justice aforesaid, to answer unto the said complaint.*

Before me, J. P. *A. S.*

(6.) Summons of master or employer, &c. thereon.

County of } *To the Constable of , in the said county.*

Whereas information and complaint hath been made unto me, J. P., esq., one of her majesty's justices of the peace in and for the said county, upon the oath of A. S., late of , in the said county, husbandman [&c. as the case may be; see the words of the statute, *ante*, p. 872, &c.], *that at Whitsuntide, &c.* [here set out the complaint as stated in the information, as in Form No. 1, as the case may be, down to the *]. *These are therefore to command you forthwith to summon the said A. M. to appear before me at , in the said county, on , the day of this present month of , at the hour of , in the* [*afternoon*] *of the same day, to show cause why the said wages should not be paid. And be you then there to certify what you shall have done in the premises. Given under my hand and seal, the day of*

A. D.

(7.) Order for payment of wages thereon, (*ante*, 873.)

County of } *Whereas information and complaint hath been made unto me, J. P., esq., one of her majesty's justices of the peace in and for the said county, upon the oath of A. S., late of , in the said county, husbandman* [&c. as the case may be], *that at Whitsuntide last, &c. at ,* [see the information, and state the complaint as therein stated]. *And whereas the said A. M. having appeared before me, in pursuance of my summons for that purpose, hath not proved to me that the wages have been duly paid unto the said A. S., nor hath showed to me any just cause why the said wages should not be paid, and hath not paid the same, and the said wages are justly due unto the said A. S., as aforesaid;* [or, *and whereas it appears to me, on the oath of A. C., constable of , aforesaid, that he, the said A. C., by virtue of my precept to him directed, did duly summon the said A. M. to appear before me at a certain time and place therein prefixed, to show cause why the said wages should not be paid, and the said A. M. hath neglected to appear according to the said summons, and hath not showed any cause why the said wages should not be paid, and hath not paid the same;*] *I, therefore, having, on the said day of A. D. , heard the said complaint, and having, in the presence of the said A. M., duly examined into, and considered the truth and matter of the same, on the oath of the said A. S.* [or, *on the oaths of the said A. S., and of G. H. and I. J., witnesses then produced by him, the said A. S.,*] *in the presence of the said A. M., do hereby adjudge, determine, and order, that he, the said A. M., upon due notice hereof* [or, *upon the* (*b*) *day of , instant* or *next*], *do pay, or cause to be paid, to him, the said A. S., the sum of , which appears to me to be justly and reasonably due from the said A. M. to the said A. S., as and for his wages, as aforesaid. Given under my hand and seal, the day of A. D. .*

J. P. (L. S.)

(*a*) As to when the wages are due, *see ante*, p. 851, 852. It should seem, that wages are sometimes due without actual service; as where the labourer has been always ready to complete the service, and the master has improperly dismissed him. In such a case, the above information should be different.

(*b*) If a time is fixed for the payment, according to the 4 Geo. IV. c. 34, s. 5, then it would seem in case of nonpayment a warrant might issue forthwith; but if no time is fixed, then, according to the 20 Geo. II. c. 19, such warrant could not issue until after twenty-one days.

12. *Forms.*

(8.) Warrant of distress for same, (*ante*, 873).

County of } *To the Constable of , in the said county.*

Whereas A. S., late of , in the said county, husbandman [as the case may be, as in the information,] *hath complained unto me, J. P., esq., one of her majesty's justices of the peace in and for the said county, that A. M., of , in the said county* [*farmer*], *hath refused to pay unto him, the said A. S., the wages justly due unto him for service in* [*husbandry*, or as the case may be], *duly performed by him, the said A. S., for the said A. M. And whereas the said A. M. having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been paid to him, the said A. S., nor hath shown any just cause why the same should not be paid, and hath not paid the same, and the said wages are justly and reasonably due unto the said A. S., as aforesaid;* [or, *and whereas the said A. M. hath been duly summoned by me to show cause why the said wages should not be paid, but he, the said A. M., hath neglected to appear according to the said summons, and hath not shown any cause why the said wages should not be paid, and hath not paid the same;*] *I, therefore, the said justice, upon due examination and consideration had thereof, on the , day of , now last past, by writing under my hand and seal, did thereupon adjudge, determine, and order that he, the said A. M., should pay, or cause to be paid, to him the said A. S., upon due notice thereof,* [or, *upon the day of , instant* or *next,*] *the sum of , which appeared to me to be justly and reasonably due from the said A. M. to him, the said A. S., as and for his wages, as aforesaid. And whereas it appears to me that the said A. M., on the said day of , now last past, had due notice of my said order, and that due demand of the said sum of was then* [or, *was on the day of instant* or *last*] *made of him, the said A. M., by him the said A. S., but that he, the said A. M., did not then pay, nor hath yet paid, the same, nor any part thereof.—These are therefore to command you to make distress of the goods and chattels of him, the said A. M.; and if, within the space of* [*four*] *days next after such distress by you made, the said sum of , together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and, out of the money arising by the sale thereof, that you do pay the said sum of unto him the said A. S., returning the overplus upon demand unto him the said A. M., the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and .* *J. P.* (L. S.)

(9.) Information of a master against a workman for misbehaviour, on 20 Geo. II. c. 19, and 4 Geo. IV. c. 34, s. 3, after entering into service, (*ante*, 872).

County of } *Be it remembered, that on this day of , in the year , P. R., of , in the county aforesaid, farmer,* [or, *steward, &c. of the said P. R.—see ante*, p. 874, as the case may be,] *complaineth and maketh oath before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, that P. S., late of , aforesaid, in the county aforesaid, servant in husbandry* [or, as the case may be], *did, on the day of , in the year of our Lord , at , in the county aforesaid, contract with the said P. R., to serve him, the said P. R., as a servant in husbandry* [or, as the case may be], *for* [here state the time of contract], *and did then and there enter into such service, and that the said P. S. afterwards, and whilst he was in the said service, to wit, on the day of , in the year of our Lord , and on other days and times afterwards, was in the execution of the said contract, and otherwise respecting the same, guilty of divers misdemeanors, miscarriages, misconduct, and ill-behaviour, in this, to wit, that he, the said P. S.* [here set forth the offence] *; *and thereupon he, the said P. R., prayeth that justice may be done,* &c. [as in Form No. 5]. *P. R.*

Before me, J. P.

(10.) Warrant against a workman thereon.

County of } *To the Constable of*

Whereas information and complaint hath been made before me, J. P., esq.,

12. *Forms*

one of her majesty's justices of the peace in and for the said county, by P. R., of , in the said county, farmer [as the case shall be], *upon the oath of the said P. R., against P. S., late of , aforesaid, in the county aforesaid, servant in husbandry* [as the case shall be], &c. [here set forth the complaint, as in the preceding information, to the*]. *These are therefore to command you forthwith to bring the said P. S. before me to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and*

(11.) Order and committment thereon, and abatement of wages during confinement (a).

County of } To the Constable of , in the said county, and to the Keeper —— } of the [*House of Correction*] *at , in the said county.*

Whereas information and complaint hath been made before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, by P. R., of , in the said county, husbandman, [or, *by P. T., the steward, &c., of the said P. R.*, as the case shall be,] *upon the oath of the said P. R.* [or, *of the said P. T.*], *against P. S., late of , aforesaid, in the county aforesaid, servant in husbandry* [as the case shall be], *to the said P. R., that, &c.* [here set forth the complaint as stated in the information, No. 8, *supra.*] *And whereas the said P. S., in pursuance of my summons* [or, *warrant*, as the case is], *for that purpose hath appeared before me to answer the said complaint, but hath not proved that he is not guilty of the said complaint and charge,* [or, if the defendant did not appear, see the Form. No. 16, *post*]. *And whereas, in pursuance of the statutes in that case made and provided, I have heard the said complaint, and have duly examined the proofs and allegations of both the said parties, in their presence, touching the matter of the said complaint, and, upon due consideration had thereof, have adjudged and determined that he, the said P. S., did contract as aforesaid, and hath in his said service and employment been guilty of divers misdemeanors, miscarriage, misconduct, and ill-behaviour, towards the said P. R., in that he, the said P. S.* [here set forth the particular offence]; *and I do therefore convict him, the said P. S., of the said offence, in pursuance of the statutes in that case made and provided**. *These are therefore to command you, the said constable, forthwith to convey the said P. S. to the said house of correction at , aforesaid, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said P. S. into your custody in the said house of correction, there to remain and be held to hard labour for the space of* [the time not to exceed three months] *from the date hereof. And I do also order that the said P. S. shall abate from his wages, to be paid him by the said P. R. the sum of , for the said period of , during which he, the said P. S., shall be so confined in the said house of correction, and I do hereby discharge the said P. R. from the payment of the said sum of , as part of the wages of him, the said P. S. And for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and* J. P. (L. S.)

(12.) Order thereon abating wages instead of committing servant (b).

[Proceed as in the preceding Form from the word "*whereas*," to the*, omitting the direction to the constable, and then thus:] *I do therefore hereby order, as a punishment for the said offence* [or, *offences*], *that the said P. S. shall abate the sum of , the whole of the wages due to him, the said P. S., for his said services;* [or, *shall abate from his wages, due to the said P. S., for his said services, to be paid to him by the said P. R., the sum of , part thereof;*] *and do hereby discharge the said P. R. from the payment of the said sum of , the whole* [or, *part*] *of the wages of him, the said P. S. for his said services. Given under my hand and seal, the day of in the year of our Lord one thousand eight hundred and .*

J. P. (L. S.)

(a) A conviction is not required in this case. The warrant, however, must be as particular as a conviction, *see Re Tordoff*, 13 *Law J., N. S., M. C.* 145; *Re Richards, id.* 147.

(b) See the act, *ante*, 881. The defendant may be punished in either of these three modes.

12. Forms.

[Proceed as directed in the preceding Form, and then thus:] *I do therefore hereby order, as a punishment for the said offence* [or, *offences*], *that the said P. S. be discharged, and do hereby discharge him, the said P. S., from his said contract, service, and employment, and the said P. R., from keeping him the said P. S. Given under my hand and seal, the day of , in the year of our Lord one thousand eight hundred and*

J. P. (L. S.)

(13.) Order thereon discharging the servant instead of any other punishment.

(14.) Information of a workman against master, for ill-usage, on 20 Geo. II. c. 19, s. 2 (*b*).

County of } *Be it remembered, that on this day of , in the year , P. S., of , in the county aforesaid, husbandman,* &c. [as the case may be, see the act, *ante*, p. 872], *complaineth and maketh oath before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, that at Michaelmas last* [the real time] *he, the said P. S., was hired and employed by P. R., of aforesaid, in the county aforesaid, farmer* [as the case may be] *to be servant in husbandry,* &c. [as the case may be] *to him, the said P. R., for the space of* [as the case may be]; *and that he, the said P. S., did accordingly, at Michaelmas last* [the real time], *as aforesaid, enter upon, and afterwards until this present time hath continued and doth continue in, the said service and employment; and that he, the said P. R., during the said service and employment, hath misused him, the said P. S., and particularly* [here set forth the special offences]. *And thereupon the said P. S. prayeth that justice may be done in the premises,* &c. [as in No. 5, *ante*, 930].

Before me, J. P. *P. S.*

(15.) Summons of master thereon.

County of } *To the Constable of*

Whereas complaint has been made unto me, J. P., esq., one of her majesty's justices of the peace in and for the said county, upon the oath of P. S., of , in the said county, husbandman [or, *labourer*, &c., as the case may be], *that at Michaelmas last* [the real time] *he, the said P. S., was hired and employed by P. R., of aforesaid, in the said county, farmer,* [as the case may be,] *to be servant in husbandry,* &c. [as the case may be], *to him, the said P. R., for the space of* [or as the case shall be]; *and that he, the said P. S., did accordingly, at Michaelmas last* [the real time], *as aforesaid, enter upon, and afterwards until this present time hath continued and doth continue in, the said service and employment; and that he, the said P. R., during the said service and employment, hath misused him, the said P. S., and particularly* [here set forth the offences] *. These are therefore to require you, in her majesty's name, to summon the said P. R. to appear before me, on next, at the house of , in , in the said county, at the hour of in the afternoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the execution thereof. Given under my hand and seal, the day of , in the year*

(16.) Order of discharge of workman thereon.

[Proceed as in preceding form, beginning at the word "*whereas*," and ending at the *, and then thus:] *And whereas the said P. R., in pursuance of my summons for that purpose, hath appeared before me, to answer unto the said complaint, but hath not proved that he is not guilty of the said complaint and charge, and, on the contrary, it hath been fully and duly proved before me upon the oath of the said P. S.,* [*and also on the oath of C. D.,* &c., as the case may be,] *to my satisfaction, that he, the said P. R., hath misused him, the said P. S., in his service and employment, as aforesaid, and particularly* [here set forth the special offence or offences]; [or, *and whereas it appears to me, upon the oath of P. T., constable of aforesaid, that he, the said P. T., by virtue of my precept to him directed, did duly summon him, the said P. R., to appear before me at a reasonable time therein prefixed, to answer unto the said complaint, and he, the said P. R., hath neglected to appear according to the said summons; and whereas it hath been fully and duly proved before me upon oath,*

(*b*) See the enactment, *ante*, p. 872.

12. *Forms.*

to my satisfaction, that he, the said P. R., hath misused him, the said P. S., in his service and employment, as aforesaid, and particularly [here set forth the particular offence or offences]: *I do therefore hereby order, in pursuance of the statute in that case made and provided, that he, the said P. S., be discharged, and do hereby discharge him, the said P. S., of and from his said service and employment. Given under my hand and seal, the day of , in the year .*

(17.) Information on 20 Geo. II. c. 19, s. 2; 6 Geo. III. c. 25, s. 4; 4 Geo. IV. c. 34, s. 8, against a workman absenting himself from service before contract completed, (*ante*, 880).

County of } *Be it remembered, that on this day of , in the year ,*
— } P. R., , in the county aforesaid, farmer [or, *steward, &c.,* as the case may be], *complaineth and maketh oath before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, that D. E., late of aforesaid, in the said county, servant in husbandry, &c.* [as the case may be], *did on, &c., at &c., contract with the said P. R. to serve the said P. R. as a servant in husbandry, &c.* [as the case may be], *for* [here state the time of the contract], *and did then and there enter into such service; and that afterwards and before the term of the said contract was completed, to wit, on, &c., and on divers days and times afterwards, that is to say, for the space of days, absented himself from his said service, contrary to his said contract*; and thereupon he, the said P. R., prayeth that justice may be done, &c.* [as in No. 5].

Before me, J. P. *P. R.*

(18.) Warrant thereon.

County of } *To , the Constable of , in the said county.*
—

Whereas information and complaint hath been made before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, by P. R., of , in the said county, farmer, &c. [or, *steward, &c.,* as the case may be], *upon the oath of the said P. R., that D. E., late of aforesaid, in the said county, servant in husbandry, &c.* [here proceed as in the preceding information to the *, and then thus]: *These are therefore to command you to bring the said D. E. before me, to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, the day of , A. D.*

(19.) Order and commitment thereon.

County of } *To , the Constable of , in the said county, and to the*
— } *Keeper of the House of Correction at , in the said county.*

Whereas information and complaint hath been made before me, J. P., esq., one of her majesty's justices of the peace in and for the said county, by P. R., of , in the said county, farmer, &c. [as the case may be], *upon the oath of the said P. R., that D. E., late of aforesaid, in the said county, servant in husbandry, &c.* [as the case may be], *did, on, &c., at, &c., contract with the said P. R. to serve the said P. R. for, &c.* [here proceed to state the complaint as in the information, No. 17, to the *, and then thus]: *And whereas the said D. E., in pursuance of my summons* [or, *warrant,* as the case may be], *for that purpose, hath appeared before me, to answer the said complaint, but hath not proved that he is not guilty of the said complaint and charge* [or, if the defendant did not appear, see the Form No. 16]; *and whereas, in pursuance of the statutes in that case made and provided, I have duly examined the proofs and allegations of both the said parties, touching the matter of the said complaint, and, upon due consideration had thereof, have adjudged and determined that he, the said D. E., did contract with the said P. R. to serve him the said P. R. as aforesaid, and did afterwards absent himself from the said service before the term of his said contract was completed, as aforesaid; and I do therefore convict him, the said D. E., of the said offence, in pursuance of the statutes in that case made and provided. These are therefore to command you, the said constable, forthwith to convey the said D. E. to the said house of correction at aforesaid, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said D. E. into your custody in the said house of correction, and him there safely keep for the space of* [not exceeding three months, nor less than one month], *from the date hereof*; and I do also order that the said P. R. shall abate, &c.* [here proceed to order an abatement of the wages as

in Form No. 12]; *and, for your so doing, this shall be your sufficient warrant. Given under my hand and seal, the day of , A. D.* 12. *Forms.*

If the justice, instead of committing the offender to prison, abate the wages only, proceed as in the preceding form, from the word "*whereas*" to the *, and then proceed as in Form (No. 12) to the end. (20.) Order abating wages only, or discharging defendant.

If the justice, instead of committing the servant or abating his wages, only discharge him, then proceed as in preceding form, from the word "*whereas*" to the *, and then proceed as in Form (No. 13) to the end.

—— } *Be it remembered, that on, &c., at, &c., N. O., of, &c., personally*
to wit. } *cometh before me, J. P., one of her majesty's justices of the peace in and for the said county, and, upon his oath, complaineth to and informeth me, that C. D., being a servant in husbandry, &c.* [as the case may be], *did, on, &c., at, &c., contract with the said N. O. to serve him, the said N. O.* [state the terms of the contract shortly]; *and that the said C. D. did not afterwards enter into or commence his said service according to his contract aforesaid (the said contract being in writing, and signed by the contracting parties aforesaid); and did then and there neglect to fulfil his contract aforesaid, contrary to the form of the statute in such case made and provided. Whereby, &c.* [Conclude as usual.] (21.) Information, on 4 Geo. IV. c. 34, s. 3, against labourers or others for not entering into service according to written contract (*a*).

Taken and sworn before me, the day of , 18 . } *J. P.* } *N. O.*

An order may be readily framed from this, and a warrant or commitment may be framed from the forms of warrant or commitment, *ante*, Nos. 18, 19.

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that he the said C. D., on at , being then and there hired and employed by one A. B., to prepare and work up certain* [*leathern*] *manufacture, to wit , did then and there, and whilst he was so hired and employed as aforesaid, purloin and embezzle* [*two skins of leather*] *of the value of , with which he the said A. B. had been before then entrusted by the said C. D.; against the form of the statute in such case made and provided.* [N.B. The form of conviction given by the act does not contain any adjudication. But as there is a discretionary power as to the period of imprisonment to be suffered for want of a distress, it is usual and proper to state the adjudication, (*see ante*, 901, 902,) which may be thus:] *And we, the said justices, do adjudge, that the said C. D., for his said offence, being his first offence, hath forfeited the sum of pounds, to be applied as the law directs, and in default of payment of the same, we, the said justices, do further adjudge that the said C. D. be committed to the house of correction, to be kept to hard labour for the space of three months, unless the penalty shall be sooner paid. Given under our hands and seals the day and year first above written.* (22.) Conviction on 22 Geo. II. c. 27, s. 1, and 17 Geo. III. c. 56, s. 1, for embezzling materials, &c. (*ante*, 893). Statement in, of adjudication.

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that the said C. D., on the day of , in the year aforesaid, at the parish aforesaid, in the said county of , unlawfully did buy and receive, and take by way of sale, a certain quantity of leather, to wit, one skin of leather, the property of A. B., and of the value of , of and from one K. K., who was then and there hired and employed by the said A. B., to prepare and work up for him the said leather, the said C. D. then and there well knowing the said K. K. to be so hired and employed as aforesaid, and the said C. D. not then having first obtained the consent of the said A. B. in that behalf, and the said A. B. not having at any time given his consent to the said C. D.'s so buying, receiving, or taking the said leather, or any part thereof; against the statute in such case made and provided.* [As to the adjudication, *see supra*, No. 22.] (23.) The like on 22 Geo. II. c. 27, s. 2, and 17 Geo. III. c. 56, s. 3, for buying materials, (*ante*, 894).

(*a*) *See ante*, p. 880. See a form in *Mann. & Ryl. Mag. Ca.* 302; 4 *Mann. Hardy* v. *Ryle*, 9 *B. & C.* 603; 2 *& Ryl.* 296, *S. C.*, *ante*, 878, held bad.

12. *Forms.*

(24.) The like for receiving them in pledge, &c.

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that the said C. D., on , at , unlawfully did [receive, accept and take by way of pawn and pledge], from one K. K., certain materials of [leather], to wit, [one skin of leather,] of the value of , he the said K. K., at the time the same were so received, accepted and taken from him as aforesaid, being hired and employed by one A. B. in the preparing and working up of certain [leathern] manufactures, and he the said C. D. at the same time well knowing that the said K. K. was so hired and employed as aforesaid, and the said C. D. not having before then obtained the consent of the said A. B. in that behalf; against the form of the statute in such case made and provided.*

[Or, state the offence thus:] *Unlawfully did receive, accept and take from one K. K., divers materials of [leathern] manufacture, to wit, [two skins of leather], of the value of , which were before then unlawfully purloined and embezzled by M. M.* [or, *some person unknown*], *he the said C. D., at the time he so received, accepted and took the same, well knowing that the same had been so unlawfully purloined and embezzled as aforesaid; against the form of the statute in such cases made and provided.* [As to the adjudication, *see ante*, No. 22.]

(25.) The like on 17 Geo. III. c. 56, s. 5, for selling or pawning materials, (*ante*, 896).

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that he the said C. D., on , at , unlawfully did sell to [pawn and pledge with] one L. L., divers materials of [leathern] manufacture, to wit, [two skins of leather] of the value of , which were before then unlawfully purloined and embezzled by K. K.* [or, *some person unknown*]. *the said A. B., at the time he so sold [pawned and pledged] the same, well knowing that the same had been so unlawfully purloined and embezzled as aforesaid; against the form of the statute in such case made and provided.* [As to the adjudication, *see ante*, No. 22.]

(26.) The like on 22 Geo. II. c. 27, s. 7, and 17 Geo. III. c. 56, s. 7, for not returning materials unused, (*ante*, 896).

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that he the said C. D., on , at , being by one A. B. then and there entrusted with certain materials of [leathern] manufactures, to wit, [two skins of leather,] in order then and there to prepare, work up, and manufacture the same, and having then and there used in all [one skin] thereof, in the preparing, working up, and manufacturing the same, did neglect and delay for the space of more than eight days, to wit, the space of twenty days after the said [one skin] of the said materials were so prepared, worked up, and manufactured as aforesaid, to return the said A. B. so much of the said materials, to wit, [one skin of the said leather], of the value of , was not used as aforesaid, although he was then and there to wit, on aforesaid, at , aforesaid, required by the said A. B., the owner of the said materials, to return the same; against the form of the statute in such case made and provided.* [As to the adjudication, *see ante*, No. 22.]

(27.) The like on 17 Geo. III. c. 56, s. 8, for neglecting work, (*ante*, 896).

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that the said C. D., on , at , being then hired, retained and employed by one A. B., to prepare and work certain materials, to wit , did wilfully neglect to perform the said work for more than eight days successively, to wit, from to ; against the form of the statute in such case made and provided.* [As to the adjudication, *see ante*, No. 22.]

(28.) The like for taking in work for others, (*ante*, 896).

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that the said C. D., on , at , being hired, retained, and employed by A. B., having then and there taken in certain materials, to wit , for manufacture, from A. B. his master, did afterwards and whilst he had such materials for manufacture as aforesaid, to wit, on , at , take in certain other materials, to wit , for manufacture from one L. L., another master of the said C. D.; against the form of the statute in such case made and provided.*

---

12. *Forms.*

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that the said C. D., on , at , did, in a certain fictitious name, to wit, in the name of L. L., unlawfully receive from one A. B., certain materials of* [leathern manufacture] *to wit , in order to be manufactured; against the form of the statute in such case made and provided.* [As to the adjudication, *see ante*, No. 22.]

(29.) The like on 17 Geo. III. c. 56, s. 9, for receiving materials in a fictitious name, (*ante*, 897).

[The statute 17 Geo. III. c. 56, prescribes the formal parts of the conviction. State the offence thus:] *For that he the said C. D., on , at , being then and there employed by one A. B., to deliver certain materials of* [leathern] *manufacture, to wit , to one L. L., a workman, to be by him the said L. L. prepared and wrought up, did then and there unlawfully and designedly deliver the same to one K. K., who was, then and there another and different person than the person to whom such materials were ordered and intended to be delivered by the said A. B., the owner thereof; against the form of the statute in such case made and provided.* [As to the adjudication, *see ante*, No. 22.]

(30.) The like for giving them to others.

—— } *Be it remembered, that on the day of , in the year of our Lord one thousand eight hundred and , C. D., of , in the said county,* [*labourer,*] *is convicted before us, J. P. and L. M., two of her majesty's justices of the peace in and for the said county; for that, on the day of , in the year aforesaid, at, &c., T. Y. and M. N. esqs., two of her majesty's justices of the peace in and for the said county, upon complaint made to them upon oath by one I. J., being a credible person, that there was cause to suspect that certain purloined and embezzled materials of* [*leather*], *were concealed in the* [*dwelling-house*] (*b*) *of the said C. D. aforesaid, by virtue of a warrant under their hands and seals, pursuant to the statute in such case made and provided, did cause the said* [*dwelling-house*] *to be searched in the day-time; and that, upon such search, under the said warrant, certain materials, used in the manufacture of* [*leather*], *to wit,* [*two skins of leather,*] *suspected to be purloined and embezzled, were found in the same* [*dwelling-house*]; *and the said materials so found as aforesaid, and the said C. D., were thereupon, to wit, on the said day of , brought before us, the said J. P. and L. M.; and the said C. D. being so brought before us, the said last-mentioned justices, did not then, or at any other time, give any account, to the satisfaction of us, the said justices, how he came by the said materials, contrary to the statute in that case made and provided; whereby the said C. D. hath forfeited the sum of 20l., being his first offence; one moiety thereof is to be paid to the said I. J., being the informer in this behalf, and we adjudge the other moiety thereof to be paid to the churchwardens and overseers of the poor of the said parish of for the use of the poor of the said parish* (c).

(31.) The like on 17 Geo. III. c. 56, s. 10, for having purloined leathern, &c. materials in possession, without giving good account thereof (*a*).

[Proceed as in the preceding form to the *, and then thus:] *Did request of us to appoint a reasonable time to produce one E. F., whom he alleged to be the person duly entitled to sell and dispose of the said materials, of and from whom he bought and received the same, and also one G. H., a credible witness, to prove the sale and delivery thereof; and we did therefore appoint the said day of , being a reasonable time, for the purpose aforesaid; and we did issue our summons to the constable of the* [*parish*] *of , in the said county, where the said E. F. and G. H. did reside, to appear before us, on the said day of , to be examined and give evidence on oath as to the matter afore-*

(32.) The like where the justices appoint a time for defendant to produce persons to account for the defendant's possession of the materials in like stat. s. 12 (*d*).

(*a*) The twenty-first section gives some of the formal parts of the conviction, *ante*, p. 901. This form was held good in *Davis* v. *Nest*, 6 *C. & P.* 167.

(*b*) See the words of the act, *ante*, p. 897.

(*c*) See the 58 Geo. III. c. 51.

(*d*) See the act, *ante*, p. 898. It is, it seems, imperative on the justices to allow this when properly requested, and on the parties entering into recognizances, &c., as directed, *ante*, p. 898.

12. *Forms.* *said; on which said day of , the said E. F. and G. H. did appear before us, and being sworn and examined, did severally depose, that they had not any knowledge of the said materials so found in the said* [*dwelling-house*] *of the said C. D., as aforesaid; and the said C. D. did not give any account, to the satisfaction of us, the said justices, how he came by the said materials, contrary to the statute in that case made and provided; whereby, &c.* [Conclude as in preceding form.]

(33.) Conviction on 1 & 2 Will. IV. c. 37, for paying of wages of artificers in goods, and other offences against that act (*a*).

—— } *Be it remembered, that on this day of , in the year of*
to wit. } *our Lord , at in the county of , A. B. is duly convicted before us, C. D. and J. G., two of her majesty's justices of the peace for the of , for that the said A. B.* [specify the offence, and the time and place when and where committed,] *whereby the said A. B. has forfeited the sum of , this being adjudged to be the first* [or *second*] *offence* [as the case may be], *against the provisions of an act to prohibit the payment of wages in goods, besides the costs of this conviction, which we assess at the sum of* [here state to whom and in what proportions the penalty and costs are to be paid], *pursuant to the statute in that case provided.*

Given under our hands and seals, .

(34.) Summons to witness in such a case (*a*).

—— } *Whereas information upon oath hath been made before me, A. B.,*
to wit. } *esq., one of her majesty's justices of the peace for the county aforesaid, that C. D., of , has been guilty of an offence against the laws prohibiting the payment of wages in goods, and that you are a material witness to be examined on the hearing and determination of such information; these are therefore to require you to appear personally before me, and such other justice or justices as shall hear and determine such information, at , in the county aforesaid, on the day of , at the hour of of the same day, there to be examined touching the matters alleged in such information. As witness my hand,*

(35.) Warrant of commitment of a witness in same case (*a*).

—— } *To the Constable or other proper Officer, and to the Keeper or Gaoler*
to wit. } *of .*

Whereas C. D. hath been duly summoned to appear and give evidence before us, A. O. and G. F., two of her majesty's justices of the peace for the county [or *riding, city, division,* or *place*] *of , on this day of , being the time and place appointed for hearing and determining the complaint made on the oath of , before us, against A. B., of having* [stating the offence as laid in the information], *contrary to the laws now in force for prohibiting the payment of wages in goods; and whereas the said C. D. hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his default,* [or]: *and whereas the said C. D. having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his evidence before us touching the matter of the said complaint, but hath refused so to do,* [or]: *therefore we the said justices do hereby, in pursuance of the statute made, &c.* [setting forth the title of this act], *commit the said C. D. to the* [describing the prison], *there to remain without bail or mainprize, for his contempt aforesaid, for the space of three calendar months, or until he shall submit himself to be examined and give his evidence touching the matter of the said complaint, or shall otherwise be discharged by due course of law. And you* [the constable or peace officer to whom the warrant is directed] *are hereby authorized and required to take into your custody the body of the said C. D., and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him safely to retain and keep, pursuant to this commitment. Given under our hands and seals, this day of , in the year of our Lord .*

(*a*) The act gives the form, *see ante*, p. 912.

12. *Forms.*

(36.) Warrant to distrain for forfeiture in same case (*a*).

—— } *To the Constable* [" *Headborough*," or " *Tithingman*,"] *of*
to wit. }

Whereas A. B., of , *is this day convicted before us, C. D. and J. G., two of her majesty's justices of the peace in and for the said county, upon oath of H. K., a credible witness, for that the said A. B. did* [here set forth the offence], *contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of* , *to be distributed as herein is mentioned, besides the sum of* *for costs, both of which he hath refused to pay; these are therefore in her majesty's name to command you to levy the said sum of* , *and also the sum of* *by distress of the goods and chattels of him the said A. B.; and if within the space of* *days next after such distress by you taken, the said sums, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do retain the said costs, and also the said forfeitures or sum of* , *and thereout pay to L. M., who hath informed and prosecuted in this case, the sum of* , *being his adjudged portion of such forfeiture; the residue whereof is to go to the treasurer of the said county of* , *in aid of the rates thereof; and that you do return the overplus, on demand, to him the said A. B.* (*the reasonable charges of taking, keeping, and selling the said distress being first deducted*); *and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of* , *that you certify the same to us, together with this warrant.*

Given under our hands and seals, .

(37.) Commitment for want of distress in same case (*a*).

—— } *To the* [*Constable*] *of* , *in the said county, and to the Keeper*
to wit. } *of the Common Gaol,* [or, *the House of Correction,*] *at* , *in the said county.*

Whereas A. B., of , *in the said county, was on the* *day* *of* *convicted before us, C. D. and J. G., two of her majesty's justices of the peace in and for the said county, upon the oath of H. K., a credible witness, for that he, the said A. B.,* [here set forth the offence,] *contrary to the statute made in the* *year of the reign of his majesty King William the Fourth, by reason whereof the said A. B. hath forfeited the sum of* , *besides the sum of* *for costs: and whereas on the* *day of* *in the year aforesaid, we did issue our warrant to the* [*constable*] *of* , *to levy the said sum of* *and costs, by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute: and whereas it duly appears to us, upon the oath of the said* [*constable*], *that the said* [*constable*] *hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid, but that no sufficient distress can be had whereon to levy the same* [or, *by confession of the said A. B.*, or, *by the oath of a credible witness, that the said A. B. hath not goods and chattels within our jurisdiction whereon to levy the said forfeiture and costs*]; *these are therefore to command you, the said constable of* *aforesaid, to apprehend the said A. B., and him safely to convey to the common gaol* [or, *house of correction*] *at* , *in the said county, and there to deliver him to the keeper thereof, together with this precept. And we do also command you the said keeper to receive and keep in your custody the said A. B. for the space of three months, unless the said sum and costs shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under our hands and seals,* .

(38.) Award to be written at foot or back of order of justices, certifying the reference, under 5 Geo. IV. c. 96, ss. 22, 25 (*b*).

We, I. K. and L. M. [name and describe the referees], *the referees appointed to settle the matters in dispute between the parties within named* [or, *I. K., one of the referees so appointed*, or, *L. M., the other referee appointed, having failed to attend*, or, *I, N. O., the justice*, as the case may be], *do hereby adjudge and determine that* [here set forth the determination; to which the referee or referees, or justice, as the case may be, shall subscribe their names].

(*a*) The act gives the form, *see ante*, 912.

(*b*) *Ante*, p. 919. The statute gives this and the next forms.

12. *Forms.*

(39.) Indorsement extending time limited for making award, under 5 Geo. IV. c. 96, s. 21.

We, L. M. and N. O., parties to the within reference, do hereby agree to extend the same to the day of inclusive. Witness our hands, this day of

Witness, *L. M.*
N. O.

(40.) Acknowledgment of fulfilment of award to be written at foot or on back thereof, under 5 Geo. IV. c. 96, s. 23.

I, L. M., do hereby acknowledge that the above award hath been fulfilled by N. O., who is hereby discharged of the same. Witness my hand, this day of

Witness, *L. M.*

(41.) Oath to be administered by the arbitrators or justice to the parties and witnesses, under 5 Geo. IV. c. 96, s. 8 (a).

The evidence that you shall give before us, the arbitrators appointed by L. M. and N. O. [the parties], *to determine the matters in difference between them, under and by virtue of an act passed in the fifth year of the reign of king George the Fourth, intituled "An Act"* [state the title of this act, *ante*, 914], *shall be the truth, the whole truth, and nothing but the truth. So help you God.*

(42.) Commitment of a witness, on 5 Geo. IV. c. 96, ss. 9, 27 (b).

Whereas proof on oath hath been made before me, one of his majesty's justices of the peace for the county [or, *riding, stewartry, division, city, burgh, liberty, town, or place*] *of , on this day of , that N. O. hath been duly summoned, and hath neglected to appear and give evidence before C. D. and E. F., the arbitrators appointed by and between G. H. and I. K., to determine the matters in dispute between them at , in the county* [or, *riding, stewartry, division, city, burgh, liberty, town, or place*] *of , on the day of , under and by virtue of an act made in the fifth year of the reign of his late majesty king George the Fourth, intituled "An Act"* [here set forth the title of this act, *ante*, 914]; *and the said N. O. being required by me, the said justice, to give evidence before the said arbitrators, and still refusing so to do, therefore I, the said justice, do hereby, in pursuance of the said act, commit the said N. O. to the* [describing the prison and the house of correction], *there to remain without bail or mainprize for his* [or, *her*] *offence aforesaid, until he* [or, *she*] *shall submit himself* [or, *herself*] *to be examined, and give his* [or, *her*] *evidence before the said arbitrators, touching the matters referred to them, as aforesaid, or shall otherwise be discharged by due course of law. And you, the* [*constable*, or other *peace officer*, or *officers*, to whom the warrant is directed], *are hereby authorized and required to take into your custody the body of the said N. O., and him* [or, *her*] *safely to convey to the said prison* [or, *house of correction*], *and him* [or, *her*], *there to deliver to the gaoler* [or, *keeper*] *thereof, who is hereby authorized and required to receive into his custody the body of the said N. O., and him* [or, *her*] *safely to detain and keep, pursuant to this commitment. Given under my hand, this day of , in the year of our Lord .*

[This commitment to be directed to the proper peace-officer, and the gaoler or keeper of the prison or house of correction.]

(43.) Warrant of distress, under 5 Geo. IV. c. 96, s. 24 (c).

To the Constable of

Whereas , of , under an award made by , on the day of , in the year of our Lord , pursuant to an act passed in the fifth year of the reign of his late majesty king George the Fourth, intituled "An Act" [state the title of this act, *ante*, 914], *is liable to pay to , of , the sum of , and also the sum of ; and the said having refused or neglected to pay the same for the space of two days and upwards subsequent to the making such award, these are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said ; and I do hereby order and direct the goods and chattels so to be distrained to be sold*

(a) *Ante*, p. 917.
(b) *Ante*, p. 917, 920. The act gives this form.
(c) *Ante*, p. 920. The act gives this form.

12. Forms.

and disposed of within days, unless the said sum of , for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid, and you are also hereby commanded to certify to me what you shall do by virtue of this my warrant. Given under my hand and seal, at , the day of

---

(44.) Constable's return to warrant of distress, on 5 Geo. IV. c. 96, s. 24 (a).

I, , constable of , do hereby certify to , justice of the peace for , that I have made diligent search for, but do not know of, nor can find any goods and chattels of , by distress and sale whereof I may levy the sum of , pursuant to his warrant for that purpose. Dated the day of , in the year of our Lord . Given under my hand, this day of , in the year of our Lord .

(45.) Commitment thereupon to house of correction (b).

*County of } To the Constable of , and also to the Keeper of the House of
— } Correction at .*

Whereas , of , under an award made by , on the day of , in the year of our Lord , pursuant to an act passed in the fifth year of the reign of his late majesty king George the Fourth, intituled "An Act" [state the title of this act, *ante*, 914], *became liable to pay to the sum of , and also the sum of , for costs, time, and expenses, making together the sum of ; and, having refused or neglected to pay the same for the space of* [*two days and upwards*] *subsequent to the making of such award, my warrant was, according to the provisions of the said act, duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said . And whereas it appears by the return of , constable of , dated the day of , that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said , by distress and sale whereof the said sum of may be levied, pursuant to my said warrant: these are therefore to command you, the said constable of , to apprehend the said , and convey him to the said house of correction at aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him, the said , into the said house of correction, and there keep him without bail or mainprize for the space of months, unless the said sum of , so ordered to be paid, as aforesaid, shall be sooner satisfied, with all reasonable expenses. Given under my hand and seal, at the day of , in the year of our Lord .*

(46.) Commitment where warrant of distress is withheld, on 5 Geo. IV. c. 96, s. 25 (b).

*County of } To the Constable of , and also to the Keeper of the House
— } of Correction at .*

Whereas , of , under an award made by , on the day of , in the year of our Lord , pursuant to an act passed in the fifth year of the reign of his late majesty king George the Fourth, intituled "An Act" [state the title of this act, *ante*, 914], *became liable to pay to the sum of , and also the sum of , for costs, time, and expenses, making together the sum of , which he has refused or neglected to pay for the space of* [*two days and upwards*] *subsequent to the making of such award; and whereas it appears to me, that the recovery of such sum and warrant of distress and sale of the goods and chattels of the said will be attended with consequences ruinous, or in an especial manner injurious, to the defaulter* [*and his family*, if any]; *and I have, therefore, determined to withhold such warrant, and to commit the said to prison, pursuant to the said act. These are therefore to command you, the said constable of , to apprehend the said , and convey him to the said house of correction at , aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him, the said , into the said house of correction, and*

(a) *Ante*, p. 920. (b) *Ante*, p. 920. The act gives this form.

12. *Forms.* *there keep him without bail or mainprize for the space of month, unless the said sum of , so ordered to be paid, as aforesaid, shall be sooner satisfied, with all reasonable expenses. Given under my hand and seal, at the day of*

(47.) Conviction on 6 Geo. IV. c. 129 (*a*).

Be it remembered, that on the day of , in the year of her majesty's reign, and in the year of our Lord , A. B. is convicted before us [naming the justices], *two of her majesty's justices of the peace for the county* [or, *riding, division, city, liberty, town, or place*] *of , of having* [stating the offence], *contrary to the act made in the sixth year of the reign of king George the Fourth, intituled "An Act"* [here set forth the title of this act, *ante*, 922]; *and we, the said justices, do hereby order and adjudge the said A. B., for the said offence, to be committed to and confined in the common gaol for the said county* [or, *riding, division, city, liberty, town, or place*], *for the space of* , [or, *to be committed to the house of correction at , within the said county,* or, *riding, division, city, liberty, town, or place,*] [*there to be kept to hard labour for the space of*]. *Given under our hands, the day and year above written.*

(48.) Commitment on like act (*b*).

Whereas C. D. hath been duly summoned to appear and give evidence before us [naming the justices who issued the summons], *two of her majesty's justices of the peace for the county* [or, *riding, division, city, liberty, town, or place*] *of , on this day of , at , being the time and place appointed for hearing and determining the complaint made by* [the informer or prosecutor], *before us, against A. B., of having* [stating the offence as laid in the information], *contrary to the act made in the sixth year of the reign of king George the Fourth, intituled "An Act"* [here insert the title of this act, *ante*, 922]; *and whereas the said C. D. hath not appeared before us at the time and place aforesaid, specified for that purpose, or offered any reasonable excuse for his* [or, *her*] *default* [or, *and whereas the said C. D. having appeared before us at the time and place aforesaid, specified for that purpose, hath not submitted to be examined as a witness, and give his* [or, *her*] *evidence before us, touching the matter of the said complaint, but hath refused so to do*]; *therefore we, the said justices, do hereby, in pursuance of the said statute, commit the said C. D. to the* [describing the prison], *there to remain without bail or mainprize, for his* [or, *her*] *contempt aforesaid, for three calendar months, or until he* [or, *she*] *shall submit himself* [or, *herself*] *to be examined, and give his* [or, *her*] *evidence before us, touching the matter of the said complaint, or shall otherwise be discharged by due course of law. And you, the* [constable, or other peace officer or officers to whom the warrant is directed], *are hereby authorized and required to take into your custody the body of the said C. D., and him* [or, *her*] *safely to convey to the said prison, and him* [or, *her*] *there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him* [or, *her*] *safely to detain and keep, pursuant to this commitment. Given under our hands, this day of , in the year of our Lord*

[This commitment to be directed to the proper peace-officer, and the gaoler or keeper of the prison.]

Sessions of the Peace.

Session of the peace, what.

THE term "Session of the Peace" is used to designate a sitting of justices for the execution of those purposes which are confided to them by

---

(*a*) See *ante*, p. 926, &c. The act gives this form.

(*b*) See *ante*, p. 926. The act gives this form.

their commission, and by several acts of parliament. Of these sessions there are four kinds—petit, special, quarter, and general sessions: the first of which is a mere private meeting of justices, on their own motion; and the second an assembly summoned for a particular purpose,—as, licensing alehouses, or appointing the overseers of a parish, or the like. Four kinds.

Under this head, we are to treat only of the last two, which are similar in every respect, except as to the time of holding. Petit and special sessions will be noticed in another place, *post*, "*Sessions, Petit and Special*," p. 986.

A general sessions of the peace is a court of record, holden before two or more justices, whereof one is of the *quorum*, for execution of the authority given them by the commission of the peace, and certain statutes and acts of parliament. (*Dalt. c.* 185; *Cro. Cir. C.* 13.) General and quarter sessions.

It is a meeting of justices for the execution of their general authority. (*Lamb.* 379.)

The queen may grant a commission of the peace for a county, and under such commission the jurisdiction of the justices named in it will extend over the whole of such county; or she may grant it for any particular district or portion of a county, exclusive of the jurisdiction of the justices of the county at large; or she may by charter give the power of acting as justices to certain officers in towns corporate, cities, and other places. In the latter cases, however, the justices of the county at large in which such district, town corporate, city, or other place, shall happen to be situate, can only be prohibited from interfering by special words in the commission or charter of the inferior jurisdiction, called technically "a *non intromittant* clause." (*R.* v. *Sainsbury*, 4 *T. R.* 456; *et vide title* "*Justices*," Vol. III.)

According to Mr. *Lambard*, general and quarter sessions are synonymous terms; for he makes no distinction between them. This, however, is erroneous: for it seems that quarter sessions are a species only of the general sessions, and that such sessions only are properly called *general quarter sessions*, which are holden in the four quarters of the year, in pursuance of the 2 Hen. V.; and that any other sessions, holden at any other time for the general execution of the justices' authority, which by the said statute they are authorized to hold oftener than at the times therein specified, if need be, may properly be called *general* sessions, and those holden on a special occasion, for the execution of some particular branch of their authority, may properly be called *special* sessions. (2 *Haw. c.* 8, *s.* 47.) Difference between general quarter and special sessions.

As to the Central Criminal Court and its jurisdiction and other matters relative thereto, and how far it takes away the jurisdiction of the sessions in London, Westminster, Middlesex, Essex, Kent, and Surrey, *see* "*Central Criminal Court*," Vol. I. Central Criminal Court.

Herein of,—

I. *The Time and Place of Holding the Sessions*, p. 944.

[36 Edw. III. c. 12; 12 Ric. II. c. 10; 2 Hen. V. st. 1, c. 4; 14 Hen. VI. c. 4; 1 & 2 Geo. IV. c. 63; 1 Will. IV. c. 70; 4 & 5 Will. IV. c. 47; 4 & 5 Will. IV. c. 36; 5 & 6 Will. IV. c. 76.]

II. *The Mode of Convening, &c., and who must attend. Suitors, Witnesses, Attorneys, &c.*, p. 948.

III. *The Mode of Proceeding at Sessions*, p. 952.

[5 Geo. II. c. 19; 22 Geo. II. c. 46; 59 Geo. III. c. 28; 6 & 7 Will. IV. c. 114.]

1. *In General*, p. 952.
2. *In Trials for Offences*, p. 956.
3. *In Trials of Traverses*, p. 964.
4. *In Hearing of Appeals, see* "*Appeal*," Vol. I.

1. *Time and Place of Holding the Sessions.*

IV. *The Jurisdiction, Power, and Duties of the Sessions*, p. 965.

[18 Edw. III. st. 2, c. 2; 34 Edw. III. c. 1; 8 & 9 Will. III. c. 30; 15 Geo. II. c. 24; 38 Geo. III. c. 52; 51 Geo. III. c. 100; 60 Geo. III. & 1 Geo. IV. c. 14; 5 & 6 Vict. c. 38.]

1. *In what Matters*, p. 965.
2. *Their Judgments*, p. 977.
3. *Special Cases*, p. 980.
4. *Costs, see "Costs,"* Vol. II.

V. *Adjournment of*, p. 983.

VI. *Fees, Estreats, and Costs*, p. 984.

[12 Ric. II. c. 10; 14 Ric. II. c. 11.]

VII. *Forms*, p. 985.

I. Time and Place of Holding the Sessions.

How many sessions shall be kept.

Time of Holding.]—By the 36 Edw. III. c. 12, it is ordered, that the justices shall hold their sessions four times in the year, viz. one session within the *Utas* of the Epiphany, the second within the second week of Midlent, the third betwixt the feasts of Pentecost and of St. John Baptist, the fourth within eight days of St. Michael.

But by the 12 Ric. II. c. 10, the justices shall keep their sessions in every quarter of the year at least; and by three days, if need be, on pain of being punished according to the discretion of the queen's council, at the suit of every man that will complain.

At what periods.

This statute did not specify the periods; but in Henry the Fifth's reign an act was passed for that purpose, 2 Hen. V. st. 1, c. 4, which directs, "That the justices of the peace in every shire named of the *quorum* be resiant within the same shire, except lords named in the commission of the peace; and also except justices of the one bench and of the other, the chief baron of the Exchequer, serjeants at the law, and the king's attorney for the time that the same justices, chief baron, serjeants at the law, and the king's attorney, be intending and occupied in the king's courts, or otherwise in some other place occupied in the king's service; and make their sessions four times by the year; (that is to say,) in the first week after the feast of St. Michael, [now directed by 54 Geo. III. *infra*, to be in the first week after the 11th October, except in London and Middlesex,] and in the first week after the Epiphany, and in the first week after the clause of Easter, and in the first week after the translation of St. Thomas the Martyr, and more often, if need be; and that the same justices hold their sessions throughout the realm of England, in the same weeks every year from henceforth."

Michaelmas sessions, 54 Geo. III. c. 84.

The holding of the *Michaelmas quarter sessions* was afterwards altered and regulated by the 54 Geo. III. c. 84, which, after reciting, "Whereas the time now appointed for holding the quarter sessions for the Michaelmas quarter might be altered, so as to render the attendance at the same more generally convenient than it is at present," enacts, "That from and after the passing of this act, the *quarter* sessions for the Michaelmas quarter shall in every year be holden, for every county, riding, division, city, borough, and place, within England and Wales, and for Berwick-upon-Tweed, in the first week after the 11th day of October, instead of at the time now appointed for holding the same; and that all acts, matters, and things done, performed, and transacted at the time appointed by this act, for holding the said Michaelmas *quarter* sessions, shall be as valid and binding to all intents and purposes as if the same had been done, performed, and transacted at the time heretofore appointed for the

holding of such sessions, notwithstanding any former act or acts to the contrary."

1. *Time and Place of Holding the Sessions.*

Sect. 2. "Nothing in this act shall extend, or be construed to extend, so as to alter or vary the time at which the sessions for London or Middlesex are now holden."

1 Will. IV. c. 70.

These enactments still remain unrepealed, but the times of holding the general quarter sessions are now pointed out by the recent act of 1 Will. IV. c. 70, s. 35, and 4 & 5 Will. IV. c. 47, the first of which, after reciting that "the general quarter sessions of the peace are now directed to be held in each year in the first week after the 11th day of October, in the first week after the Epiphany, in the first week after the clause of Easter, and in the first week after the translation of St. Thomas the Martyr; and whereas it will be expedient that the times of holding the *general quarter sessions* of the peace should be *altered in part;*" enacts, "That in the year of our Lord 1831, and afterwards, the justices of the peace in every county, riding, or division, for which *quarter sessions* of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October, in the first week after the 28th day of December, in the first week after the 31st day of March, and in the first week after the 24th day of June; and that all acts, matters, and things done, performed, and transacted at the times appointed by this act for the holding of the *general quarter sessions* of the peace shall be as valid and binding to all intents and purposes as if the same had been done, performed, and transacted at *general quarter sessions* of the peace holden at the times by law limited for the holding thereof before the passing of this act."

Epiphany. Easter. Midsummer.

4 & 5 Will. IV. c. 47.

By the 4 & 5 Will. IV. c. 47, intituled "An Act for preventing the Interference of the Spring Assizes with the April Quarter Sessions," [13th August, 1834,] reciting that by the 1 Will. IV. c. 70, it is directed, "That the justices of the peace in every county, riding, or division for which quarter sessions of the peace ought by law to be held shall hold their general quarter sessions of the peace (among other times) in the first week after the 28th day of December, and in the first week after the 31st day of March: And whereas in some counties of England and Wales the time usually fixed for holding the spring assizes interferes with the due holding of the last-mentioned quarter sessions, and although the justices of the peace have authority to hold general sessions of the peace at other times of the year besides those specified in the said recited act, such sessions are not quarter sessions within the intent of various acts of parliament which give jurisdiction to justices of the peace in their quarter sessions or in their general quarter sessions; and for the purpose of preventing the inconvenience arising from such interference as aforesaid, it is expedient to allow to the justices of the peace a discretion as to the time of holding their general quarter sessions, which they are now required to hold in the week next after the 31st day of March;" it is declared and enacted, "That in every county, riding, or division for which general quarter sessions ought to be held it shall be lawful for the justices assembled in their general quarter sessions in the week next after the 28th day of December in every year to name (if they shall see occasion so to do) two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, riding, or division, so as such time shall not be earlier than the 7th day of March, nor later than the 22nd day of April, and to give notice of the day so fixed by advertisement in such newspapers as shall be directed by the justices so assembled; and in every such case the general quarter sessions held on the day so fixed and notified shall be valid, and it shall not be necessary to hold any sessions of the peace for such county, riding, or division, in the week next after the 31st day of March, any thing in the said recited act to the contrary notwithstanding: Provided

Justices at Epiphany sessions may name two of their body to fix the day for holding the next general quarter sessions.

Proviso.

1. *Time and Place of Holding the Sessions.*

always, that in every county, riding, and division where no other day shall be fixed in the manner hereinbefore mentioned, the justices of the peace shall hold their general quarter sessions of the peace in the week next after the 31st day of March, as by the said recited act they are required."

The strict regular exposition of these statutes is, that if the feast-day fall upon a Sunday, the sessions shall be held in the week following, and not the same week. (2 *Hale*, 49.)

Are variously held in different counties.

The quarter sessions are in fact variously holden in several counties, some at one day, and some at another; yet it hath been ruled, that these are each of them good quarter sessions within the several acts that relate to quarter sessions; for those acts, especially the 2 Hen. V., are only directory, and in the affirmative; and therefore, though the sessions are held on another day, according to the general direction of the 12 Rich. II., yet they are quarter sessions. (2 *Hale*, 50.)

Statutes 2 Hen. V. and 54 Geo. III. only directory.

And, on the same principle, it has been recently decided, that although the 54 Geo. III. c. 84, provides that the quarter sessions for the Michaelmas quarter shall be holden in the first week after the 11th of October, instead of the time then appointed for holding the same, this act also is only directory, and the Michaelmas quarter sessions may be lawfully holden in another week than that so specified by the statute. (*R.* v. *Justices of Leicester*, 9 *D. & R.* 772; 7 *B. & C.* 6.)

Original intermediate session.

An original intermediate general sessions by magistrates, and not merely an adjournment of a quarter sessions, may be held, under the authority of the 2 Hen. V. st. 1, c. 4. The point was raised on a question as to the validity of an indictment for murder found at such intermediate sessions, which was a sessions held in addition to the eight which are usually holden for Middlesex. (*R.* v. *Mullaney*, 6 *C. & P.* 96.)

Sessions for London and Middlesex.

Sessions for London, Westminster, and Middlesex.]—The sessions in London and Middlesex are, it may be seen, excluded from the operation of the 54 Geo. III. c. 84; and the regulations under which they are held are distinct in many respects from those which govern the other parts of the kingdom.

By the 14 Hen. VI. c. 4, in Middlesex, the justices shall keep their sessions twice in the year at least, and more often (if need be) for any riot or forcible entry.

And, in consequence of the large population of the districts of London and Middlesex, their sessions are in fact holden *eight times* in the year; four as quarter sessions, not exactly at the times directed by the statutes, but as near to them as convenience will admit, and the other four as original general sessions, in the intervening periods; and both have equal jurisdiction to take and try indictments, except in cases where, by statute, jurisdiction is given exclusively to the quarter sessions. (*Burley* v. *Watson*, 2 *Bla. Rep.* 1051; *R.* v. *Mullaney*, 6 *C. & P.* 96.)

In Middlesex, the justices have a commission of oyer and terminer, under which they act at the time when their sessions are holden.

Westminster.

The sessions for the *liberty of Westminster* are only holden *four times* a year, and under a different commission of the peace from those for Middlesex. By 9 Geo. IV. c. 9, each session is to commence in the week preceding the holding of each of the general and quarter sessions for the county of Middlesex: an enactment which, by analogy to the other decisions in *pari materiâ*, would probably be holden directory only.

Offences committed within the liberty of Westminster, may be prosecuted and determined at the Middlesex sessions; and if a party be bound by recognizance to prefer a bill of indictment, and prosecute for an offence, at the next sessions of the peace for Westminster, and do in fact prefer a bill at the next sessions for Middlesex, it is holden to be in compliance with the terms of his recognizance. (*Dick. Sess. by Talfourd, p.* 55, 5*th ed.*; *Cr. Cir. Comp.* 8*th ed.* 13, 14.)

Sessions for bo-

Sessions for Boroughs and Places under the Municipal Corporation Act.]

—As to these, *see* the 5 & 6 Will. IV. c. 76, ss. 103, 104, 105, 106, 107, and 111, *ante*, "*Corporations*," Vol. II.

1. *Time and Place of Holding the Sessions.*

Central Criminal Court.]—As to this, *see* "*Central Criminal Court*," Vol. I.

roughs under the Municipal Corporation Act.

Central Criminal Court.

When a sufficient Number of Justices do not appear.]—The sessions cannot be held without the presence of two justices. (1 *Bla. Com.* 354, *n.*) And so strict is this law, that if there be not enough justices to hold a sessions, they cannot adjourn it to hold same legally. (*R.* v. *Westrington*, 2 *Bott.* 733.) Nevertheless, if on the day appointed for holding the general quarter sessions a sufficient number of justices do not appear, the sessions for that quarter are not irrecoverably lost. And they may in some cases be held even within the week after the days appointed by the statutes; for though there will not be time to issue a regular precept for that purpose, such precept is not absolutely necessary to the holding of a session "For if competent justices of the peace do get men to serve and thereupon do hold a sessions, without any precept before directed, all presentments made before them by twelve lawful men shall be of force in law, but no man shall lose anything for his default of appearance there, because no man had notice of their sitting." (*Lambard*, 330.) But there is another and preferable course. As the statutes requiring the sessions to be held at particular times are merely directory, there is no doubt that justices have power to hold sessions more frequently than once a quarter; indeed 2 Hen. V. st. 1, c. 4, s. 2, after pointing out at what parts of the year the four sessions shall be held, adds, "and more often if need be." A general session therefore may be called at any time by two justices within the jurisdiction, one being of the quorum. (2 *Hawk. c.* 8, *s.* 41.) But where from pressure of business it is desirable to hold sessions more frequently than once a quarter, it is a modern and proper practice to adjourn the last preceding quarter sessions to some intermediate day before the time for holding the next original quarter, instead of holding an extra original general session. (*R.* v. *Grince, T.* 4 *Geo.* I. 19; *Vin. Abr.* 358; and the opinion given by the law officers in 1815, on a case submitted to them by the justices of Staffordshire; 5 *Burn, J.* 24*th ed.* (*Chetwynd*), 203, *n.* (*a*); *R.* v. *West Torrington, Burr. S. C.* 293.)

When a sufficient number of justices do not appear.

From the case of *The King* v. *the Justices of London*, 15 *East, R.* 632, it appears that, if sufficient justices do not appear on the day appointed for holding sessions, the magistrates may, indeed, afterward hold a general session for general purposes; but it is not so certain that such session would be good as a quarter session, in respect of such matters as are expressly made cognizable at a quarter sessions only (*e. g.* appeals against a poor-rate). The cases which have been supposed to prove that such subsequent session would not be good as a quarter session, do not establish that proposition, but merely prove that, where one original session has been actually holden, a second within the quarter cannot be also good as a quarter session. (*R.* v. *Polstead*, 2 *Strange*, 1263; *R.* v. *West Torrington, Burr. S. C.* 293; *see R.* v. *Mullaney*, 6 *C. & P.* 96; *ante*, 946.)

The Places where Sessions are to be held.]—The justices by whom the precept to convene a quarter session is issued, may name any place within the county, division, riding, or liberty for which it is summoned, as that where it is to be holden, according to their discretion; and then all officers and suitors of the court will be bound to give their attendance. (*Dalt.* 185.)

The places where county sessions to be holden.

The 28 Geo. III. c. 49, s. 4, contains an enactment empowering justices for counties to act, in certain cases, in a city being a county of itself. (*See* the enactment, *ante*, "*Justices*," Vol. III.)

28 Geo. III. c. 49.

Also the 1 & 2 Geo. IV. c. 63, *ante*, Vol. III., empowers justices for counties, &c. to act for such counties in exclusive jurisdictions, &c.

1 & 2 Geo. IV. c. 63.

Also by the Municipal Corporation Act (5 & 6 Will. IV. c. 76, *s.* 111,

5 & 6 Will. IV. c. 76.

2. *The Mode of Convening, &c.*

ante, Vol. III.), in every borough in which the queen shall not grant a separate court of quarter sessions, the justices of the county within which such borough is situated, shall exercise in it the same jurisdiction as they may in any other part of the county; and see further as to exclusive jurisdiction, *ante*, Vol. III.

II. The Mode of Convening, &c., and who must Attend at Sessions. Suitors, Witnesses, Attorneys, &c.

By whom convened.

By whom convened.]—A general session may be convened by any two justices within the jurisdiction, one being of the *quorum*, or by the *custos rotulorum*, and any one justice, but not by the *custos rotulorum* alone, or by one justice alone. (*Lamb.* 375.)

How convened.

How convened.]—The mode of convening such session is usually by precept, directed under their teste to the sheriff, for the summons of the sessions, thereby commanding him to return a grand jury before them, or their fellow justices, at a certain day and place, and to give notice to all stewards, constables, and bailiffs of liberties, to be present, and do their duties at such day and place, and to proclaim, in proper places, throughout his bailiwick, that such sessions will be holden at such day and place, and to attend there himself to do his duty. (2 *Haw. c.* 8, *s.* 42.)

Such precept shall bear teste, or be dated, fifteen days before the return, and ought forthwith to be delivered to the sheriff, to the end he may have sufficient time to proclaim the sessions, to summon and return the several juries, and to warn all officers and others that have business there to attend. (*Nels. Introduct.* 35.)

Effect of holding under irregular precept.

Without such precept to the sheriff, no one is bound to attend a general session; but if the session be holden after an irregular precept, and the parties necessary to the despatch of business attend, and the business be regularly transacted, the proceedings will be valid. (*Lamb.* 375; *Reg.* v. *The Bailiffs of Ipswich, Ld. Raym.* 1238; *ante*, 947.)

Superseding of a precept.

A precept for a general session, issued by two justices, cannot be superseded by other justices, but only by a *supersedeas* issued out of chancery. (*Lamb.* 378, *l.* 4, *c.* 2; 2 *Haw. c.* 8, *s.* 43.)

But it is not sufficient that the precept run under the name of the *custos rotulorum* alone; for he hath no more authority in this behalf than any one of his fellow-justices; and the words of the commission are, that the sheriff shall cause a jury to appear at such days and places as the said justices, or such *two or more of them*, as aforesaid, shall appoint. (*Lamb.* 382, *supra.*)

Sessions at two places.

Mr. *Lambard* puts a case from Mr. *Marrow*, That if two or more justices appoint the sessions to be holden in one town, and so many more appoint a sessions in another town the same day, and holds they may be so held, and that the presentments in both are good; but that appearance at one is a discharge of service at the other. But it may be well questioned whether they are not both void; for it doth not appear that the justices are required or enabled to hold more than one sessions at a time, and so, their authority being equal, and seeing no preference can be made by the priority of time, or nature of the service, they may be taken to be both void. However, the justices by whose forwardness such division happens, or on whom such miscarriage is chargeable, are punishable for the same by information and fine, or being put out of the commission, as the case shall require. (*Dalt. c.* 185, *p.* 457.)

Proceedings of justices should be decorous.

Indeed, it is of infinite importance that the proceedings of magistrates should not only be substantially good, but also that they should be decorous. Wherefore, where two sets of magistrates have concurrent

jurisdictions, and one appoints a meeting to grant ale licences, their jurisdiction attaches so as to exclude the others appointing a subsequent meeting; but they may all meet together on the first day. But if, after such appointment, the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and the subject of an indictment. (*R.* v. *T. Sainsbury, Esq., and another*, 4 *T. R.* 451; *see* Vol. I. p. 106.)

2. *The Mode of Convening, &c.*

Who must attend at Sessions.]—In this place it will not be necessary to do more than mention the names of the persons who constitute these sessions of the peace; information as to their appointment, offices, duty, liability, &c., may be found, under their respective titles, in this work.

Who must attend at sessions.

They are as follows:—

(1.) The *Justices of the Peace*: these, without doubt, are compellable to appear at the sessions; for, without their appearance, the sessions cannot be holden. (*Dalt. c.* 185, *p.* 457.) But a justice ought not to join in an order at sessions wherein himself is concerned, nor ought his name to be in the caption. An order was quashed for that reason. (*The case of Foxham Tithing, Wilts*, 2 *Salk.* 607.) In *The Queen* v. *The Bailiffs of Ipswich*, it is laid down, that unless a commission of the peace nominates a *quorum*, all the justices appointed by it must attend at a sessions. (2 *Ld. Raym.* 1232; *and see* 9 *B. & Cres.* 859.) In *R.* v. *Carlile*, 4 *C. & P.* 415, the court of King's Bench refused to grant a *habeas corpus* to discharge out of custody a person who had been convicted of libel at the commission of oyer and terminer at the Old Bailey, on the ground that when the verdict was returned only one commissioner was present instead of two, as required by law. It seems questionable, however, whether such a circumstance may not be assigned as error.

Justices.

Justices being interested.

(2.) The *Custos Rotulorum*, who hath custody of the rolls of sessions, ought (by the commission) to be there by himself, or by his deputy, who is the clerk of the peace. (*Dalt. c.* 185, *p.* 458.)

Custos rotulorum.

(3.) The *Sheriff*, also, by virtue of the commission, by himself, or his deputy; to receive the fines, or return jurors, to execute process, and what else to his office doth appertain (*Id.*) *See post*, "*Sheriff*."

Sheriff.

(4.) All *Coroners*. (*Id.*) *See* "*Coroner*," Vol. II.

Coroners.

(5.) The *Constables of Hundreds*, (that is, high constables,) and all other officers to whom any warrant hath been directed, in order to make return thereof. (*Id.*) *See* "*Constable*," Vol. I.

High constables.

(6.) All *Bailiffs of Hundreds and Liberties*, in respect they are bound to give an account of all sessions process. (*Id.*)

Bailiffs.

(7.) The *Gaoler*: to bring thither his prisoners, and to receive such as may be committed. (*Id.*) *See* "*Gaol*," Vol. III.

Gaoler.

(8.) The *Keeper of the House of Correction*, to give in a calendar and account of persons in his custody. (*Id.*)

Keeper of the house of correction.

(9.) All persons returned by the sheriff, by virtue of the aforesaid precept. And the jurors, not appearing according to their summons, are punishable by loss of issues, which usually make part of the estreats of sessions. (*Id.*)

Persons returned by the sheriff,

(10.) All persons returned by *Recognizance* to answer, or to prosecute and give evidence. (*Dalt. c.* 185, *p.* 458.)

or by recognizance.

Suitors of the Court, is a term which may be supposed to imply only those who have some voluntary suit to prosecute; but it may be used as descriptive of all persons who have any duty to perform, or any *necessary business* to execute, voluntary or official, before the court.

Suitors of the court.

A *clerk to justices* in petty sessions, appointed by order of such sessions, has no legal hold upon his office, nor will the court of Queen's Bench interfere if he is dismissed summarily, and without cause assigned. (*Exparte Sandys, Gent.*, 1 *Nev. & M.* 591; 4 *B. & Adol.* 863, *S. C.*)

Clerk of justices.

As to the office of *clerk of the peace*, *see* "*Clerk of the Peace*," Vol. I.

Witnesses.]—We have already seen, that when a charge is made before

Witnesses.

2. *The Mode of Convening, &c.*

a magistrate, he may bind over the party making the charge to prosecute and give evidence, and also all who can give material evidence; and, on their obstinate refusal, may commit them. And as to the proper course to be pursued in different cases of this nature, *see title "Examination,"* Vol. II. p. 464, 465.

It may be now necessary to notice the process by which witnesses are compelled to attend.

When any offender is brought before a justice by warrant, or otherwise, for felony, or breach of the peace, beside the informant, and any witnesses who may happen to be voluntarily present (and whom, it has already been seen, it is the duty of the examining justice to bind by recognizance to appear at the session,) there may be others known to him, whose testimony may be necessary, or at least useful, on the occasion. These the justice *may* issue his *warrant* to bring before him, to be examined touching the matter in question, [*see* Form, *post*, 986]; but it is more common, in the first instance, to make it only a summons.

If the evidence be found by the justice on examination to be material, he must then be bound by recognizance, like the rest, to attend at the session of the peace, and give it to the court and juries there, in like form, varied only according to the circumstances of the offence; and if he refuse to enter into such recognizance, the justice may commit him to gaol; (2 *Hale*, 282; 1 *Hale*, 586; *Bennet et Uxor* v. *Watson*, 3 *M. & Sel.* 1;) wherein, if he obstinately continue till the session, he may be brought up to the court by writ of *habeas corpus ad testificandum*. (31 Car. II. c. 2; 44 Geo. III. c. 102. *See* "*Habeas Corpus*," Vol. III.)

Contumacy.

Lord *Preston* being committed by the court of quarter session for contempt, in refusing to be sworn to give evidence to the grand jury, on an indictment of high treason, he was brought by *habeas corpus* into the court of King's Bench; and *Holt*, C. J., said it was a great contempt, and that, had he been there, he would have fined him, and committed him till he paid the fine; but being otherwise, he was bailed. (*R.* v. *Lord Preston*, *Salk.* 278.) In a case which is of a criminal nature, even in form, (*e. g.* indictment for stopping a way,) a person present in court, if called as a witness, is bound to be sworn and give evidence, though not subpœnaed. (*R.* v. *Sadler and others*, 4 *C. & P.* 218.)

Subpœna.

The process, to bring before the grand jury or court such witnesses as have *not* been bound by recognizance to appear, whether on the part of the prosecution, or for the defendant, is by *subpœna*: which, whatever might have been the law in former times, (2 *Haw. c.* 46,) is now to be obtained in all cases whatsoever; (2 Will. III. c. 3; 1 Anne, c. 9; 4 *Bla. Com.* 359; 2 *Haw. c.* 46;) for the assizes, from the Crown Office; for the sessions, from the clerk of the peace, *or* from the Crown Office. This writ, when issued by the clerk of the peace, is at utmost only compulsory within the county where it is granted; and therefore, if the witness lives beyond its limits, application must be made to the Crown Office, whence it may issue to any part of England. (*Cro. Circ. Comp.* 19, 21.) This appears to be still law, notwithstanding that by 45 Geo. III. c. 92, s. 3, the service of every writ of *subpœna* upon any person, in any one of the parts of the United Kingdom, requiring the appearance of such person to give evidence in any criminal prosecution, in any other of the parts of the same, viz., England, Scotland, and Ireland, is made as effectual in law, as if the same had been served in that part of the United Kingdom where the person so served is required to appear; and the party disobeying it, is liable to punishment by attachment in the court of Queen's Bench, as the highest court of criminal jurisdiction, and having power over all others. For that enactment only extends to give to a *subpœna*, having validity throughout either England, Scotland, or Ireland, taken generally, the same validity in either of those parts of the United Kingdom; and contemplates such a *subpœna* as would be enforced by one of the courts having competent jurisdiction, to compel the attendance of a witness in any county or place within either of those parts.

(*R.* v. *Brownell*, 1 *A. & E.* 598.) So that it is by far the more effectual and advisable course, to sue out a *subpœna* from the Crown Office, in order to bring the witness within reach of attachment from the court of Queen's Bench, in case of his making default in his attendance at the sessions. (2 *Nolan*, 541, *n.* (1), *4th ed.; Talfourd's Dick. Q. S.* 129, *5th ed.*)

2. *The Mode of Convening, &c.*

As to how a party may be be punished for disobedience to the *subpœna*, *see* "*Evidence*," Vol. II. p. 449.

The writ of *habeas corpus ad testificandum*, for a witness in prison, can only be obtained by an affidavit made by the party applying, stating the confinement of the person whose evidence is wanted; that he is a material witness; that the trial cannot safely be proceeded in without his presence; and that it is about to take place at a certain time and place, with such other circumstances (if required) as may show the necessity for the application. It may be granted by any one of the judges of the superior courts in England and Ireland. (44 Geo. III. c. 102.) It is to be served on the person in whose custody the party is detained. (*See title* "*Evidence*," Vol. II. p. 449.)

Habeas corpus ad testificandum.

Protection of Court to Suitors, Freedom of Access, &c.]—All persons may freely attend at the sessions for the advancement of public justice, and for the service of the king. And to this end they are (as it were) invited thither by a certain freedom of access, and by protection from common arrest; a thing that is incident to each court of record, and without which justice would be greatly hindered. So that, if a man come voluntarily to the sessions, either to prefer a bill of indictment, or to give information against another, or to tender fine upon an indictment touching himself; or do come compelled to make appearance for saving his recognizance, and be arrested by the sheriff, upon common and original process, in his coming thither, or during his tarrying there, it seemeth (Mr. *Lambard* says) that (upon examination of the matter under his oath) he shall be discharged thereof by the privilege of this court, even as it is used in the higher courts at Westminster. (*Lamb.* 402.)

Protection, &c. of court to suitors, &c., freedom of access.

This privilege is so incident to the duty of attendance on judicial proceedings, that it has been construed to extend to the case of a party to a cause attending an arbitrator, to be examined under an order of *nisi prius* made a rule of court, (*Spence* v. *Stuart, Bart.*, 3 *East*, 89;) or an attorney attending professionally, (*Webb, P. O.*, v. *Taylor*, 13 *L. J.* (*N. S.*), *Q. B.* 24; *Arding* v. *Flower*, 8 *T. R.* 534.)

This protection is extended to a person in going, continuing, and returning. (*Pitt's case*, 2 *Stra.* 987.)

Privilege from arrest, &c.

This returning hath never been very nicely scanned, so as to require a man to go the direct road. Neither is the law so strict in point of time as to require a person to set out immediately after the trial is over; and for that was cited the case of *Hatch* v. *Blisset*, T. 13 Anne. She had a trial at Winchester assizes, which was over on Friday at four in the afternoon; she stayed there till after dinner on Saturday; and in the evening at seven was arrested going home to Portsmouth, which is twenty miles; and the court held, that she ought to be discharged, her protection not being expired, and a little deviation of loitering would not alter it.

But where a man is arrested by process out of the courts at Westminster, it doth not seem that the justices of the peace (unless the arrest be made in the sessions) have power to discharge him; but on application to the court from which the process issued, (*see Selby* v. *Hills*, 8 *Bing.* 166; 1 *M. & Scott*, 253; 1 *Dowl.* 257, *S. C.*; *Kinder* v. *Williams*, 4 *T. R.* 377; *Exp. Whitehead*, 1 *Dowl. P. C.* 3,) such court probably may discharge him, and punish the person who made the arrest. But the application must be made as soon as possible after the arrest. (*Reg.* v. *Burgess*, 8 *A. & E.* 275.)

Attorneys.]—By the 6 & 7 Vict. c. 73, s. 2, no person shall act as an attorney or solicitor in any cause, matter, or suit, civil or criminal juris-

Who shall act in the sessions as solicitor.

2. *The Mode of Convening, &c.*

diction, to be heard, tried, or determined before any justice of assize of oyer and terminer, or gaol delivery, or at any general or quarter sessions of the peace, or before any justice or justices, or before any commissioners of her majesty's revenue, unless such person shall have been, previously to the passing of the said act, admitted and inrolled, and otherwise duly qualified to act as an attorney or solicitor, under or by virtue of the laws at the time of the passing the said act in force, or unless such person shall, after the passing of the said act, be admitted and inrolled, and otherwise duly qualified to act as an attorney or solicitor, pursuant to the directions and regulations of the said act; and unless such person shall continue to be so duly qualified, and on the roll at the time of his acting in the capacity of an attorney or solicitor.

Under-sheriff.

By this act also, the statutes of 1 Hen. V. c. 4, and 22 Geo. II. c. 46, are repealed, which provided that no attorney whilst under-sheriff, or holding various minor offices, should practise in the queen's courts, or at quarter sessions.

Right of counsel or attorney to act, &c.

Right of Counsel or Attorney to act in Court.]—As to the right of a counsel or attorney to be present or act as the legal adviser of the party, *see "Justices,"* Vol. III.; and as to the prisoner's right to have counsel, and the office and duties of counsel, *see post*, 960.

III. The Mode of Proceeding at Sessions.

1. *In General.*
2. *In Trial of Offences.*
3. *In Trial of Traverses.*
4. *In Hearing of Appeals.*

1. In General.

Time of meeting.

It is necessary that the court should assemble before twelve at noon on the day for which it is summoned; for by the 25 Car. II. c. 2, s. 2, the qualification oaths, &c. must be taken between the hours of nine and twelve in the forenoon.

The justices being met, the crier or bailiff usually proclaims the session in the following terms:—

Proclamation.

"O yez, O yez, O yez,—The Queen's justices do strictly charge and command all manner of persons to keep silence, whilst the Queen's commission of the peace for this county of is openly read, upon pain of imprisonment.

"O yez, O yez, O yez,—All manner of persons who have anything to do at the general quarter sessions of the peace for this county, draw near and give your attendance."

Commission and statutes to be read.

The commission, the queen's proclamation against vice, &c., and the several statutes directed to be read at the sessions, ought now to be read by the clerks of the peace and the town clerks respectively. These *were* principally the following:—5 Eliz. c. 1, against popery (*a*); 30 Car. II. c. 3, as to burying in woollen (*a*); 11 & 12 Will. III. c. 15 (*a*), as to ale measures; 1 Geo. I. c. 5, as to riots; and the black act, 9 Geo. I. c. 22 (*a*), which have been required to be given in charge at every quarter session; and the 4 & 5 W. & M. c. 24, 7 & 8 Will. III. c. 32, 3 & 4 Anne, c. 18, and 3 Geo. II. c. 25 (*a*), concerning jurors, which are to be read in Midsummer sessions yearly; and 2 Geo. II. c. 24 (*a*), for pre-

(*a*) These statutes are most of them now repealed: see the respective *titles* of "*Popery*," *ante*, p. 614; "*Weights and Measures*," *post*: "*Riots*," *ante*, p. 733; "*Malicious Injuries to Property*," *ante*; "*Jurors*," Vol. III.; "*Bribery*," Vol. I.

venting bribery and corruption in the election of members of parliament, which is to be read at every Easter session.

3. *The Mode of Proceeding at Sessions.*

It will not be wondered at, that, in the present day, when the time allowed to justices for the performance of their duties has become so much more valuable from the additional pressure of business, *the practice of reading these statutes is discontinued.* Some of them, besides, are now repealed, some have become obsolete, and the notoriety of the others renders such a course unnecessary. The queen's proclamation, however, is still read.

Return of precept.

The sheriff is then called on to return the several precepts directed to him, returnable on that day, that proceedings may be commenced thereon.

Second proclamation.

The call is thus:—*Sheriff of this county, return the several precepts to you directed and returnable here this day, that her majesty's justices may proceed thereon.*

The sheriff makes his return accordingly.

Oaths to be taken

The persons who attend to take the several oaths are next called, and such oaths are administered to them by the clerk of the peace.

We have already noticed the act 25 Car. II. c. 2, and 1 Geo. I. c. 13, which direct persons to take the oaths between the hours of *nine* and *twelve* in the forenoon; and *not otherwise.* But it has been held a sufficient compliance with the statute, if the ceremony of administering the oaths of qualification for offices be *commenced* previous to the last of the hours of limitation appointed by the statute, and *continued* till all are sworn. (*Dick. Sess.*)

Calling constables, &c.

The oaths of qualification and indemnity having been administered, it is then usual for the clerk of the peace to call over the constables of hundreds, and of parishes, &c., which is commonly done (with respect to the defaulters on the first call) a second, and even a third time. On their not answering to the name of their respective parishes for which they serve, the court will set a fine on the defaulters.

Defaulters.

Grand jury called.

The names of those returned to serve on the grand jury are now called over by the clerk of the peace (or in cities and towns corporate by the town clerk). For matters relating to the qualification, &c., of those jurors, *see title "Jurors,"* Vol. III., &c. The number called and sworn should not be less than thirteen, nor more than twenty-three; for if a number amounting to two full juries were sworn, there might be an equal division; but if a bill is found by a grand jury of more than twenty-three, and the prisoner pleads, and is found guilty, the indictment will not be quashed on motion, but he will be left to his writ of error. (*R.* v. *Marsh*, 6 *A. & E.* 237.)

It is not unusual at sessions, after sixteen or seventeen names have been called, and the parties have appeared, to consider the inquest as complete, and to dismiss the rest who have attended on their summons.

When the grand jurors who remain have named their foreman, the following oath is administered by the clerk of the peace to the foreman:—

"*You, as foreman of this inquest, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge. The Queen's council, your fellows, and your own, you shall keep secret. You shall present no man for envy, hatred, or malice; neither shall you leave any man unpresented for fear, favour, or affection, or hope of reward, but you shall present all things truly as they come to your knowledge according to the best of your understanding. So help you God.*"

Then the rest of the grand jury, by three at a time in order, are sworn in the following manner:—

"*The same oath which your foreman hath taken on his part, you and every of you shall well and truly observe and keep on your parts. So help you God.*"

Chairman's charge.

The ceremony of administering the oaths to the grand jurors being concluded, the chairman of the session ought to deliver his charge, proclamation having been made to keep silence while the charge is given.

3. *The Mode of Proceeding at Sessions.*

That charge, remarks Mr. Serjeant *Talfourd*, for the most part consists of remarks tending to explain and elucidate any cases which the calendar may disclose, or which may be known to the court as likely to be presented, and requiring more than ordinary attention, either from the complicated nature of the facts, or from the law applicable to them happening to be of recent enactment or of unfrequent use. In cases, for example, where the distinction between principal and accessary, between theft and embezzlement, or between larceny and breach of trust, or obtaining money under false pretences, are likely to arise on the matters which will be submitted to the grand jury, a popular explanation of the law on these subjects will facilitate their labours, and give to them their proper aim. When parties have been committed, or held to bail, on charges arising upon any recent act of parliament, it becomes absolutely necessary that the statute should be stated and explained by the chairman, and even when no such case is presented by the calendar, it may be expedient for him to take this opportunity of publicly stating and expounding any new penal law, or modification of the former law, which it may be desirable should be generally understood. In the exercise of a sound discretion he may also advert to general topics presented by the calendar—to the prevalence of crime in general, or of any particular class of crime, to the causes which may induce it, and the means which may be applied by way of prevention. He may properly take occasion to discourage petty and frivolous prosecutions, as indictments for trifling assaults, which only serve to prolong animosities, to unsettle habits of industry, and to burden the parties with fruitless expenses. His local knowledge will enable him to expose with gentleness and clearness any prevalent mistake which may operate to the public evil; as those which sometimes exist in the remuneration of the labourer and the administration of the poor laws; and in times of excitement, to suggest considerations which may tend to preserve peace, order, and good feeling among all classes of his neighbours.

Recognizances called.

The charge being concluded and the jury retired to their room, the course is to call the recognizances, especially such as are to prosecute and give evidence, that so bills, which have not been previously prepared, may be drawn by the clerk of the peace.

Bills preferred.

The bills, as they are got ready—that is to say, drawn out fairly and engrossed on parchment (either by the prosecutor's professional adviser, or by the clerk of the peace), with the names of the witnesses written on the backs of them respectively, are delivered to the grand jury, and the parties bound to give evidence upon them, being sworn in court, are sent to the grand jury to give their evidence. It is presumed, of course, that they are all in attendance for these purposes, either by recognizance or under *subpœna*; to which there can regularly be but one exception, and that arising out of a privilege given by a statute to prosecutors of offences committed within the county of a city, or town corporate, to prefer their indictments before the grand jury of the county adjoining, at the sessions for the same, on condition of entering into recognizance to pay the extra costs incurred by such proceeding, if the court shall so direct. In the case of this privilege being taken advantage of, it may be necessary to notice here, that the prosecutor, *ten days before the session* must give to the defendant, as well as to the witnesses, notices in writing to that effect. (*Talfourd's Dick. Sess.* 156, *5th ed.*)

The sessions may appoint two or more justices (one to be of the quorum), to form a court to sit apart from them.

The dispatch of business in the sessions is now greatly assisted by the enactment of the 59 Geo. III. c. 28, "An Act to empower the justices to divide the Court of Quarter Sessions." That act directs, (s. 1,) "That whenever and as often as any court of quarter session or general session of the peace shall be assembled for the despatch of business thereunto belonging, the justices then present may, on the first day of their being so assembled, take into their consideration the state of the business likely to be brought before them at such quarter session or general session; and if it shall appear to them that such business, if heard and determined by the whole court, is likely to occupy more than three days, including the day of their

being so assembled, it shall and may be lawful for the said justices to appoint two or more justices, one of whom shall be of the quorum, to sit apart from themselves in some place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices are at the same time proceeding in the dispatch of the other business of the same court; and that the proceedings so had by and before such two or more justices so sitting apart shall be as good and effectual in the law to all intents and purposes as if the same were had before the court assembled and sitting as usual in its ordinary place of sitting, and shall be enrolled and recorded accordingly."

3. *The Mode of Proceeding at Sessions.*

Sect. 2. "When two or more justices shall have sat apart in manner before directed by this act, and orders, rules, and regulations shall have been made for the apportionment of business, such orders, rules, and regulations shall remain and continue in force as long as shall be thought expedient, without the necessity of renewing such orders, rules, and regulations at each succeeding session, to the intent that the same may become public and better known to all professional and other persons engaged in or in any manner interested in the business of such quarter session."

Regulations for apportionment of business need not be renewed at each succeeding session.

Sect. 3. "The clerk of the peace or his deputy (wherever two or more justices shall sit apart at any quarter session) shall be authorized and required to appoint a fit and sufficient person to record the proceedings so had before the justices sitting apart; and such proceedings shall be delivered over to the clerk of the peace or his deputy, and shall be equally deemed to be a part of the records of such session, as if the same proceedings had been recorded by the clerk of the peace himself; and it shall be lawful for the justices assembled at the quarter session to make an order upon the treasurer of the county to pay to the clerk of the peace such sum or sums of money as they shall deem a fit and reasonable remuneration to the clerk of the peace for such purpose as aforesaid; and it shall be lawful for such justices to appoint an additional crier, and to grant him such remuneration for his care and pains as they shall deem reasonable, which shall in like manner be paid by the treasurer of the county."

Clerk of peace to appoint a person to record proceedings of separate court.

Sessions may order county treasurer to remunerate clerk of peace.

And by 7 Will. IV. & 1 Vict. c. 19, s. 4, in order to remove doubts which had arisen on the above statute, the same power of dividing is given to justices assembled at *adjourned* quarter sessions.

Division at adjourned sessions.

And lastly, by 5 & 6 Vict. c. 38, s. 4, it is enacted, "That whenever any court of general or quarter session, or adjourned session of the peace, shall be assembled for the dispatch of business thereunto belonging, and there shall be any order of the court in force for the appointment of a permanent chairman and deputy chairman of the said court, it shall be lawful for the justices then present, if it shall appear to them advisable, having regard to the business to be disposed of, to appoint two or more justices, one of whom shall be such deputy chairman, to sit apart in some convenient place in or near the court, there to hear and determine such business as shall be referred to them, whilst others of the justices, one of whom shall be the said chairman, are at the same time proceeding in the dispatch of the other business of the same court, and that the proceedings so had by and before the justices so sitting apart shall be as good and effectual in the law as if the same were had before the court assembled and sitting as usual in its ordinary place of sitting, and shall be enrolled and recorded accordingly; and that the several provisions of an act of the 59 Geo. III c. 28, intituled, &c, shall so far as may be extend and be applicable to the record court so to be holden as aforesaid."

This power of dividing, it may be right here to observe, may, according to the second section of the first-mentioned act, either be exercised at each particular session, as the necessity for it shall arise, or it may be provided for prospectively for any number of sessions that may be thought convenient; and, for the effectual execution of the purposes designed by it, the sessions are authorized to call upon the clerk of the peace to appoint a deputy, and for themselves to appoint an additional crier for

Remarks on the power of dividing.

3. *The Mode of Proceeding at Sessions.*

such engrafted or emanant court, and to remunerate them respectively for their labours by order on the county treasurer.

In noticing this act, Mr. *Dickinson* has observed, that, to whatever extent the authority confined by this statute be exercised, when the grand jury have received their instructions from the chairman, and have retired to their room, seems the proper moment for the division of the court to take place. The most natural distribution of the various subjects over which a quarter sessions of the peace now has jurisdiction, seems to be, that one division of the court should take that portion which requires the intervention of a jury, with the motions arising out of, or relating to, the commencement, the postponement, and the result of prosecution, whatever it may be; while the other is occupied with the exercise of the summary jurisdiction given to justices by statute, whether original, or by appeal from that of individual magistrates. (*Talfourd's Dick. Sess. p.* 167, *5th ed.*)

---

2. In Trials for Offences.

In trials for offences.

A great part of the business of session consists of the arraignment and trial of prisoners: it will be proper in this place, therefore, to take some notice of the manner of proceeding thereupon; though in the *title* "*Arraignment*," Vol. I., some information touching these matters has been already given.

Mode of prosecution.

It is said generally, that *all offences* shall be prosecuted at the sessions by presentment, information, or indictment. (*Com. Dig. Justice, (D.* 9).) But if jurisdiction be given to the sessions to "hear and determine," and the statute doth not say by information, this shall be by indictment, and not upon information. (*Dalt. c.* 191, *p.* 469.)

Where a power is given to a jurisdiction which does not ordinarily entertain actions, bills, or plaints, in general terms, *to inquire of, hear, and determine* the offence, it must be understood to mean by the common-law mode of proceeding, viz. by indictment or presentment. (*Shipman, q. t.* v. *Henbest*, 4 *T. R.* 109.)

Arraignment.

The bills of indictment having been delivered into court by the grand jury, the gaoler is called to set his prisoners to the bar, and the crier being called to *make a bar*, that is, to dispose of the company, that a way may be made open from the court to the prisoners, and that the court, jury, and prisoners may see each other, one of the prisoners is called to:—"*A. B., hold up your hand.*"

Yet it is not necessary that he hold up his hand at the bar, or be commanded so to do; for this is only a ceremony, for making known the person of the prisoner to the court, and if he answer that he be the same person, it is all one. (2 *Haw. c.* 28, *s.* 2.)

Humanity towards the prisoner.

Mr. *Hawkins* observes, that every person at the time of his arraignment ought to be used with all the humanity and gentleness which is consistent with the nature of the thing, and under no other terror or uneasiness than what proceeds from a sense of his guilt, and the misfortune of his present circumstances, and therefore ought not to be brought to the bar in a contumelious manner, as with his hands tied together, or any other mark of ignominy and reproach; nor even with fetters on his feet, unless there be some danger of a *rescous* or escape. (2 *Haw. c.* 28, *s.* 1.)

And the court ought to exhort him to answer without fear, and to acquaint him that he shall have justice done to him. (2 *Inst.* 316.)

If money or property have been taken from the prisoner on his apprehension, and it appear to the court to be in no way material to support the charge against him, or connected with the offence charged, the court will upon motion order it to be restored to him. An instance of taking away the watch of a party accused of rape was severely censured, and its immediate return ordered. (*R.* v. *Kinsey*, 7 *C. & P.* 447.)

Indictment read.

The indictment is now read, and in cases of *felony* this is a proceeding

of the utmost consequence, because the prisoner, not being, as it seems, entitled to a copy, [*see title* "*Indictment*," Vol. III.] has no other means of knowing the precise charge to which he is to answer. Even at the time when our judicial proceedings were written in Latin, the 37 Edw. III. c. 15, required that this important document should be done in English, The charge should be laid in the second person, and be read slowly and distinctly—as thus: "*You, A. B., stand indicted, by the name of A. B., late of, &c., in the county of, &c., for that you, on, &c.,*" reading the whole indictment in the same manner. If it be demanded by the prisoner, the indictment must be read so slowly as to enable his solicitor to take a copy as the officer proceeds—for the law entitles him to this privilege.

3. *The Mode of Proceeding at Sessions.*

The reading of the indictment being concluded, the officer addresses the prisoner,—"*How say you, A. B., are you guilty of the felony whereof you stand indicted, or not guilty?*" If the prisoner pleads guilty, the court may immediately record the plea, and either proceed immediately to give judgment, or examine witnesses as to the circumstances of the offence, for the guidance of their own discretion in determining on the sentence. But it is usual for the officer to explain to the prisoner the consequence of his plea, and to ask him again whether he persists in it; and there is a very prevalent practice among judges of assize of doing far more than this—of entreating the prisoner to withdraw his plea, admonishing him of his right to a trial, and manifesting the greatest reluctance to receive his open confession of guilt. How far this practice at sessions shall be adopted, must be left to the good sense of the chairman. (*Dick. Sess. by Talfourd, p.* 497, *5th ed.*)

Plea—guilty.

If the prisoner has any matter to plead, either in abatement or bar of the indictment, as *misnomer, auterfois acquit, auterfois convict*, a pardon, &c., he shall plead it upon arraignment, without answering to the felony. (2 *Hale*, 219.)

For further information regarding the above pleas, *see titles* "*Abatement*," Vol. I.; "*Misnomer*," *ante*; "*Auterfois Acquit*," Vol. I.; "*Auterfois Convict*," Vol. I.; "*Lunatics*," Vol. III., &c. And as to standing mute, *see titles* "*Mute*," *ante*; "*Plea*," *ante*, p. 561.)

If the prisoner plead not guilty, it was customary, before the enactment of the 7 & 8 Geo. IV. c. 28, s. 1, for the officer to ask him, "*How will you be tried?*" and to direct him to make answer, "*By God and my country;*" to which the officer then rejoined, "*God send you a good deliverance.*" These forms are, however, now abolished by the statute alluded to, which directs, that when a prisoner shall plead not guilty, he shall by such plea, without any further form, be deemed to have put himself on the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly. The plea is, however, still recorded by the officer, who writes the words *ponit se* on the parchment record of the proceedings of the sessions.

Plea—not guilty.

The question, "*How will you be tried?*" may be well imagined to have been in former times of some importance, when it is remembered that trials by battle and ordeal were then in use, as well as by the country or a jury

When a sufficient number of prisoners are arraigned, the petty jury are called on their panel by the clerk of the peace, in this manner. "*You good men that are returned and impanelled to try the issue joined between our sovereign lady the Queen and the prisoners at the bar, answer to your names, and save your fines;*" which done, and a full jury appearing, the clerk of the peace calls the prisoners to the bar, and informs them of their right to challenge, in these terms:—"*These good men, whose names you hear called, and who appear, are those who are to pass between our sovereign lady the Queen and you, upon your respective trials. If, therefore, you or either of you would challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard.*"

Jury called.

Jury challenged.

3. *The Mode of Proceeding at Sessions.*

This, then, is the proper time for the prisoner or for the prosecutor to make challenges; for no challenge is good until a full jury appear. (*R.* v. *Edmonds*, 4 *B. & Ald.* 471; *and see further*, "*Jurors*," Vol. III.)

Severing challenge.

Every prisoner may desire the right of challenge separately; and if he demand his right in legal phrase, "*to sever in his challenges*," the other prisoners will be desired to withdraw, that he may make his challenges alone.

Praying a tales.

If there be a defect of jurors, a party intending to challenge the array may pray a *tales*, and then make his challenge (*See* "*Jurors*," Vol. III.)

As to *causes of challenge*, and other information on this head, *see* "*Jurors*," Vol. III.

Jury sworn.

The challenges being concluded, and the jury full, the clerk of the peace calls the jury to be sworn, every man severally; and this is done, in cases of felony, in the following manner:—

"*You shall well and truly try, and true deliverance make, between our sovereign lady the Queen and the prisoners at the bar, whom you shall have in charge, and a true verdict give according to the evidence. So help you God.*"

In misdemeanor.

In cases of misdemeanor, the jurors are sworn four at a time, in the following terms.—

"*You shall well and truly try the issue joined between our sovereign lady the Queen and the defendant, and a true verdict give, according to the evidence. So help you God.*"

The crier then counts the jurors, as the clerk of the peace reads their names, and asks them "*Are you all sworn?*"

Proclamation.

After the jury are sworn, in cases of felony, the crier makes proclamation as follows:—

"*If any one can inform my lords the Queen's justices, the Queen's attorney-general, or the Queen's serjeant, on this inquest now to be taken, of any felonies or misdemeanors done or committed by the prisoner at the bar, let him come forth, and he shall be heard: for the prisoner now stands at the bar on his deliverance; and they that are bound to prosecute and give evidence, let them come forth, and prosecute and give evidence, or they will forfeit their recognizances.*"

The form used in cases of misdemeanor is similar to the above, with the omission of the term "*felony*," and the substitution of the word "defendant" for "*prisoner*," and the omission of the standing at the bar, &c.

Prosecutors and witnesses called.

The prosecutor and his witnesses are then called by name, and, on appearance, take the places assigned them in court.

Opening case.

In cases of misdemeanor, the prosecutor's counsel now at once opens trial; but in felonies, another form yet remains,—it is termed *charging the jury*.

Jury charged.

All the prisoners, except one to be tried, are put from the bar, and the clerk of the peace charges the jury as follows:—

"*The prisoner at the bar stands indicted by the name of A. B.* [reading the indictment, as upon the arraignment]; *upon this indictment he has been arraigned; upon his arraignment, has pleaded not guilty, and for his trial has put himself upon God and his country, which country you are. Your charge, therefore, is to inquire whether he be guilty of the felony whereof he stands indicted, or not guilty, and to hearken to the evidence.*"

Witnesses sworn.

The witnesses, as well for the Queen as the prisoner, are then sworn thus:—

"*The evidence you shall give to the court and jury sworn, between our sovereign lady the Queen and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you God.*"

Trial begins.

Opening of case by counsel.

The trial then proceeds. If the case be one of misdemeanor, and there be two or more counsel for the prosecution, the substance of the indictment, which the jury have not yet heard, must be stated by the junior; in cases of felony, this is of course superfluous, the indictment having

been already twice read in the hearing of the jury; and, although in former times it was observed, it is now, in sessions practice, generally disused. It often occurs at sessions, that the case is of so plain a nature as not to require opening; when this is not the case, however, it is opened by the leading counsel, according to his instructions.

3. *The Mode of Proceeding at Sessions.*

In treating of this important duty, Mr. Serjeant *Talfourd* observes, that "when the counsel for the prosecution addresses the jury in a case of felony, he ought to confine himself to a simple statement of the facts which he expects to prove: but in cases where the prisoner has no counsel, he should particularly refrain from stating any part of the facts, the proof of which from his own brief appear doubtful, except with proper qualification; for he will either produce on the minds of the jurors an impression, which the mere failure of the evidence may not remove in instances where the prisoner is unable to comment on it with effect; or may awaken a feeling against the case for the prosecution, which in other respects it may not deserve. The court, too, if watchful, cannot fail in the summing up, to notice the discrepancy between the statement and proof.

"But in all cases, as well of felony as misdemeanor, where a prisoner has counsel, not only may the facts on which the prosecution rests be stated, but they may be reasoned on, so as to anticipate any line of defence which may probably be adopted. For as counsel for parties charged with felony may now address the jury in their defence, as might always have been done in misdemeanor, the position of parties charged with either degree of offence is thus assimilated in cases where they have counsel, and it is no longer desirable for the prosecutor's counsel to abstain from observing generally on the case he opens in such manner as to connect its parts in any way he may think advisable to demonstrate the probability of guilt and the difficulty of an opposite conclusion. But, even here, he should refrain from indulging in invective, and from appealing to the prejudices or passions of the jury; for it is neither in good taste nor right feeling to struggle for a conviction, as an advocate in a civil cause contends for a verdict." And *see Reg.* v. *Hursfield*, 8 *C. & P.* 269, in which it was considered that counsel for the prosecution should only act as an assistant to the court in the furtherance of justice.

Acquittal of a defendant to make him a witness.

On an indictment against several persons, the counsel for the prosecution has a right before opening his case to the acquittal of any defendant he intends to call as a witness. (*R.* v. *Rowland*, *R. & M.* 401.)

Prosecutor not allowed to address the jury.

A prosecutor is never allowed personally to address the jury in the same manner as counsel; (*see R.* v. *Price*, 2 *B. & Ald.* 606; 1 *Chit. Rep.* 352, *S. C.*;) he can only be examined on his oath, in the box, like another witness. The cause, though instituted by him, is not considered *his* cause, but that of the crown; when no counsel, therefore, is engaged for the prosecution, there can be no opening; and the duty of examining the witnesses devolves on the chairman. In cases of felony, the depositions taken before magistrates are of much importance in assisting him in this duty; they ought, therefore, in all cases to be returned by the magistrates before whom they were taken. In cases of misdemeanor, he can merely call on the witnesses upon the back of the indictment to be sworn, and give their own narrative.

Evidence.

The reader who wishes for information respecting the parts of the charge to be established, the degree and nature of proof necessary, and the admissibility of witnesses, &c., is referred to *title* "*Evidence*," Vol. II.

Case closed.

On the case for the prosecution being closed, it is the duty of the chairman, in all cases where the prisoner has no counsel, and in cases of felony, though he has counsel, to ask him what he has to say in answer to the charge.

Copies of depositions to be allowed to defendant.

Before the 6 & 7 Will. IV. c. 114, it was always discretionary in the magistrate, before whom the depositions were taken, to let any one see them; even the party accused had no right to demand a copy of the depositions, though in cases of treason or felony he must have been put in

3. *The Mode of Proceeding at Sessions.*

possession of a list containing the names of the witnesses. (*Rex* v. *Holland*, 4 *T. R.* 611; 1 *Phill. Ev. 7th ed.* 427, 8.)

But by that act, s. 3, "All persons who after the passing of this act shall be held to bail or committed to prison for any offence against the law shall be entitled to require and have, on demand (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same), copies of the examinations of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged."

Prisoners entitled to inspect depositions on trial.

Sect. 4. "All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had."

Defence, and prisoner's right to have counsel.

On the case being closed and submitted to the jury, the defendant or his leading counsel, when allowed to be heard, is entitled to address them.

On an indictment for an offence under felony, the defendant always might be heard by counsel. (*Wood, Inst. B.* 4, *c.* 5.)

On an indictment for treason the defendant shall not have counsel allowed to him, unless a point of law arise proper to be debated; nor a copy of the indictment. (2 *Hawk. c.* 39, *s.* 2, 13.)

And before the 6 & 7 Will. IV. c. 114, the same rule applied on an indictment for felony. (*Id.*) But now by that act, sect. 1, after the 1st of October, 1836, "All persons tried for *felonies shall be admitted*, after the close of the case for the prosecution, to make full answer and defence thereto, by counsel learned in the law, or by attorney in courts where attorneys practise as counsel."

And by sect. 2 of the same act, it is declared and enacted, "That in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney."

"Regulations of Practice."

In consequence of the passing of this act, the following "Regulations of Practice to be observed on Trials for Felony where the Prisoner has Counsel," were adopted at a meeting of twelve out of the fifteen judges, before the Spring Circuit in 1837.

I. That where a witness for the crown has made a deposition before a magistrate, he cannot upon his cross-examination by the prisoner's counsel be asked whether he did or did not in his deposition make such or such a statement, until the deposition itself has been read in order to manifest whether such statement is or is not contained therein, and that such deposition must be read as part of the evidence of the cross-examining counsel.

II. That after such deposition has been read the prisoner's counsel may proceed in his cross-examination of the witness as to any supposed contradiction or variance between the testimony of the witness in court and his former deposition; after which the counsel for the prosecution may re-examine the witness, and after the prisoner's counsel has addressed the jury will be entitled to the reply; and in case the counsel for the prisoner comments upon any supposed variance or contradiction without

having read the deposition, the court may direct it to be read, and the counsel for the prosecution will be entitled to reply upon it.

3. *The Mode of Proceeding at Sessions.*

III. That the witness cannot in cross-examination be compelled to answer whether he did or did not make such or such a statement before the magistrate, until after his deposition has been read, and it appears that it contains no mention of such statement; in that event, the counsel for the prisoner may proceed with his cross-examination; and if the prisoner admit such statement to have been made, he may comment upon such omission, or upon the effect of it upon the other part of this testimony; or if the witness denies that he made such statement, the counsel for the prisoner may then, if such statement be material to the matter in issue, call witnesses to prove that he made such statement; but in either event, the reading of the deposition is the prisoner's evidence, and the counsel for the prosecution will be entitled to reply.

IV. If the only evidence called on the part of the prisoner is evidence to character, although the counsel for the prosecution is entitled to the reply, it will be a matter for his discretion whether he will use it or not; cases may occur in which it may be fit and proper so to do.

V. In cases of public prosecution for felony instituted by the crown, the law officers of the crown, and those who represent them, are in strictness entitled to the reply, although no evidence is produced on the part of the prisoner.

If in a case of felony the prisoner's counsel has addressed the jury, the prisoner himself will not be allowed to do so also. (*Reg.* v. *Boucher*, 8 *C. & P.* 141.)

Court to be of counsel with him.

If he has no counsel, the court is to be of counsel with the prisoner, and ought to advise him for his good, and not take advantage too strictly against him. (*Dalt. c.* 185, *p.* 460.)

On an indictment for a misdemeanor, it has been decided that the defendant cannot have the assistance of counsel to examine the witnesses, and reserve to himself the right of addressing the jury. (*R.* v. *Parkins*, 1 *C. & P.* 548; 3 *Camp.* 98; *Ry. & M.* 166, *S. C.*) But if he conduct his defence himself, and any point of law arises which he professes himself unable to argue, the court will hear it argued by his counsel. (*Id.*)

The party accused may well be supposed to labour under many disadvantages, on being obliged to defend himself; any statement, therefore, which he may submit ought to be heard attentively and patiently: and although, as has been observed, it is not made on oath, and not supported by proof, still, if it carries with it the appearance of sincerity, and offers a reasonable explanation of the circumstances which seem to bear against him, it ought to be carefully weighed and candidly estimated by a jury.

The counsel for the defendant may comment on the case for the prosecution: he may adduce evidence to any extent, and even introduce new facts, provided he can establish them by witnesses. He cannot, however, assume as proved that which is not proved. Nor will he be allowed to state anything which he is not in a situation to prove, or to state the prisoner's story. (*Reg.* v. *Beard*, 8 *C. & P.* 142.)

Right of counsel to reply.

In cases of felony, the counsel for the prosecution never replies. In cases of misdemeanor, where witnesses are called (except merely as to character), the counsel for the prosecution has a right to reply in every instance, similar to that of a counsel in a civil action. If the witnesses are called merely to give evidence as to character, a usage has long prevailed among counsel in the highest criminal courts of forbearing to reply, which, however it originated, is now firmly established and acted on. But in answer to such evidence, the prosecutor may, by 6 & 7 Will. IV. c. 111, give evidence of the indictment and conviction of such person for a previous felony. (*Post*, 963.)

In the case of the *King* v. *Bignold*, 4 *D. & R.* 70; 1 *M. & M.* 85; *D. & R. N. P.* 59, Lord *Tenterden* revived an important rule, originally promulgated by Lord *Kenyon*, and by which a reply is allowed to the

3. *The Mode of Proceeding at Sessions*

counsel for the prosecution, if the counsel for the defendant, in his address to the jury, states any fact, or any document which is not already in evidence, although he afterwards declines to prove the fact, or put it in writing. But it would be scarcely fair, as has been remarked, to apply this rule to a statement made by a defendant in person, and unsupported by evidence.

Upon an information for a misdemeanor, if the defendant calls no witnesses, the counsel for the prosecution, except in the case of the attorney-general, is not entitled to a reply. (*Peake's Cases N. P. 3rd ed.* 310; *but see R.* v. *Smith, Id., semb. contr.*)

Summing up.

It is the duty of the chairman, the case on both sides being closed, to sum up the evidence. His address ought to be free from all technical phraseology, the substance of the charge plainly stated, the attention of the jury directed to the precise issue to be tried, and the evidence applied to that issue. In cases of felony, it may be necessary to read over the whole evidence; if requested by the jury, this will of course be done, though, in general, it is better merely to state its substance.

Reading evidence.

Verdict

If the jury cannot agree on their verdict at the bar, a bailiff must be sworn to keep the jury thus:—

"*You shall swear that you shall keep this jury without meat, drink, fire, or candle, you shall suffer none to speak to them, neither shall you speak to them yourself, but only to ask them whether they are agreed. So help you God.*" (*Dalt. c.* 185.)

The jury coming back, the prisoner is brought to the bar; the names of the jury are called over, and the verdict taken as before. (*Dalt. c.* 185.)

The officer then, in case of felony, desires the prisoner to hold up his hand, and addresses the jury:—

"*Gentlemen, are you agreed on your verdict? do you find the prisoner guilty of this felony whereof he stands indicted, or not guilty?*"

The foreman then delivers the verdict, which, in cases of felony, can only be received in open court, and in the prisoner's presence, though the court may be adjourned during the deliberation. (*Co. Lit.* 227.)

In cases of misdemeanor it may be delivered elsewhere, and is often given in the defendant's absence. (*R.* v. *Woodfall*, 5 *Burr.* 2667.)

When the verdict is delivered, the officer proceeds to ask the same question as to the other prisoners, if there are any, included in the charge; and having received their answers in like manner, severally addresses them:—

"*Hearken to your verdict as the court recordeth it: you say A. B. is guilty* [or, *not guilty*] *of the felony whereof he stands indicted* [and so of the others, if more than one]; *this is your verdict, and so ye say all.*"

The verdict is at the same time recorded. But this is not absolutely requisite, and it may be recorded afterwards. (*R.* v. *Carlile*, 2 *B. & Adol.* 362.)

The verdict cannot be altered after it is once recorded, but it may be and often is altered after it has been pronounced, at the suggestion of the court, if its terms imply a contradiction, or are accompanied by something which renders the meaning doubtful. If upon a special finding, amounting to an acquittal, the chairman directs a verdict of guilty to be entered, the court of Queen's Bench will not grant a *mandamus*, commanding the minute to be entered according to the fact; but the proper course for the prisoner is to apply for a pardon. (*R.* v. *Suffolk* (*Justices*), 5 *N. & M.* 139; *R.* v. *Hewes*, 3 *Ad. & Ell.* 725.)

Offender previously convicted.

It was enacted by 7 & 8 Geo. IV. c. 28, s. 11, that heavier penalties should be inflicted on persons convicted of felony after a previous conviction; and it was provided that in an indictment for any such felony not punishable with death committed after a previous conviction of felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and

a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction without proof of the signature or official character of the person appearing to have signed the same.

3. *The Mode of Proceeding at Sessions.*

The practice under this act was, that on the trial of persons charged with felony after previous conviction, the jury was charged to inquire at the same time concerning such previous conviction; but it being doubted whether that course was consistent with a fair and impartial inquiry, as regarded the matter of the subsequent felony then the subject of trial, it was enacted by 6 & 7 Will. IV. c. 111, that from and after the passing of that act, (20 Aug. 1836,) "it shall not be lawful on the trial of any person for any such subsequent felony to charge the jury to inquire concerning such previous conviction, *until after* they shall have inquired concerning such subsequent felony, and shall have found such person guilty of the same, and whenever in any indictment such previous conviction shall be stated, the reading of such statement to the jury as part of the indictment shall be deferred until after such finding as aforesaid: Provided nevertheless, that if upon the trial of any person for any such subsequent felony as aforesaid, such person shall give evidence of his or her good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the indictment and conviction of such person for the previous felony, before such verdict of 'guilty' shall have been returned; and the jury shall inquire concerning such previous conviction for felony at the same time that they inquire concerning the subsequent felony."

It is sufficient to prove that the prisoner is the person who underwent the sentence mentioned in the certificate (*e. g.*) by the gaoler who received him into his custody under it, without producing any witness who was present at the former trial. (*Reg.* v. *Crofts*, 9 *C. & P.* 219.)

Proceedings on verdict of guilty.

The verdict of guilty having been returned, the prisoner, or the defendant, if present in court, is called upon to say why judgment should not be passed upon him. He may here offer something to the court in extenuation of his offence; or he may (says *Blackstone*, 4 *Com.* 375), at this period, as well as at his arraignment, offer any exceptions to the indictment, in *arrest* or stay of judgment; as, for want of sufficient certainty in setting forth either the person, the time, the place, or the offence. To this species of error alone the privilege is confined.

Sentence.

If nothing is offered in extenuation, or something so trifling as not to require further deliberation, sentence is generally passed immediately; proclamation having been made three times by the crier of the court, as follows:—

"*O yez, O yez,—All manner of persons are commanded to keep silence, whilst judgment is given against the prisoners at the bar, upon pain of imprisonment.*"

In trials for misdemeanors, this proclamation is not made, and in the less important cases of felony it is often omitted.

The prisoner is then placed at the bar, and sentence pronounced by the chairman. On the subject of this important part of a justice's public duty —in the exercise of which, as has been well remarked, the law has left the *most* to his *discretion*, with the *fewest* means of regulating his *judgment*— we subjoin a note by Mr. *Dickinson*, from his work on Sessions:—

"Where statutes have conferred upon individual magistrates, or even upon sessions, the authority of summary convictions, without the intervention of jurors, they have limited the penalties for the offences created or punished by them within *narrow generally*, but *always* within *prescribed* bounds; while, with respect to fines, imprisonment, and even transportation, they have, of necessity, perhaps left to them the same latitude of

3. *The Mode of Proceeding at Sessions.*

apportionment as to the judges of the superior courts, although frequently persons without the same professional experience, the same familiar acquaintance with the multiplied inducements to the commission of crimes, or the same means of discrimination respecting the effects of punishment. The present purpose is, therefore, to impress upon the minds of those who are only commencing their career in the public duties of magistracy, not merely the justice and humanity, and therefore the duty, but even the policy also, of exercising the most unprejudiced and temperate discrimination in the distribution of punishments, on account of the salutary consequences which may reasonably be expected from it. The punishments ordained by municipal regulations may not improperly be designated by the epithets 'admonitory,' 'exemplary,' 'and 'vindictive.' To discriminate further than this, might perhaps incur the imputation of fanciful refinement; but thus far it may not be too much to insist. The first suggestions of common sense and common benevolence need not wait for the sanction of experiment, for they are to be found in the very rudiments of civilization. To the novice in delinquency, punishment is intended primarily to operate as an individual admonition; and where the heart has not been absolutely depraved, but only the passions excited, or the temerity of youth stimulated by excessive temptation or the influence of bad example, it will frequently have its due effect, if administered with that moderation which corrects without degrading. *Nemo repente turpissimus*, is an adage as true in point of fact as necessary to be kept in mind by those, whose rank and duties call upon them to mark with precision of punishment the deviation of ignorance and frailty from the path of rectitude. On a repetition of offences, where it is ascertained, indeed, that admonition has failed to correct, to deter, by making the culprit an example, becomes a duty to society: for compassion to the individual may then well give way to the general protection of the social system. Nevertheless, till amendment has become entirely hopeless, the severity of punishment should be short of that which cuts off all retreat from an association with the vicious. The third, and last, stage of depravity is that alone in which moderation may cease to be considered as an attribute of justice. In that extremity, society has an ample right to manifest its resentment; and the administrators of its laws are justified in becoming the ministers of its wrath; because cutting off (by removal or disgrace) the morbid member from the general body becomes the only method of preventing the communication of contagion."

3. In Trials of Traverses.

Traverses tried.

The trials for misdemeanors are not in general brought on till after the felonies.

Then may be called the persons bound by recognizance at the last sessions, to prosecute their traverses at the present sessions. For if a person indicted for an assault or misdemeanor do appear, and plead not guilty, and traverse the indictment, he shall enter into his recognizance to prosecute his traverse at the next quarter sessions. For, in *Bumpsted's case, Cro. Car.* 448, the whole court was of opinion, that justices of the peace may not inquire, try, and determine civil offences, in one and the same day; for the party ought to have a convenient time to provide for the trial.

A defendant cannot be tried on any traverse until he shall have obtained from the clerk of the peace a record of the proceedings, and a *venire facias*, which he must get returned by the under-sheriff, and his traverse must afterwards be entered with the clerk of the peace.

Where a bill for an assault or misdemeanor is found against a defendant not in custody, he cannot be tried at the same session, unless under the 60 Geo. III. & 1 Geo. IV. c. 4, or by the consent of the prosecutors. (*See "Traverse,"* Vol. VI.)

And, on the trial of a traverse, the defendant must appear in the court, at the bar, in his proper person; and then the indictment is read to the

jury: and the prosecutor and his witnesses are called to give evidence, and are heard; and if the defendant be found guilty, the court sets a fine upon him adequate to the offence, or other punishment as the law directs. 3. *The Mode of Proceeding at Sessions.*

In cases of assault, the court frequently recommends the defendant to talk with the prosecutor,—that is, to make him amends for the injury done him; and if the prosecutor come and acknowlege a satisfaction received, the court will set a fine on the defendant.

"But this," says *Blackstone*, "surely is a dangerous practice; and, though it may be entrusted to the prudence and discretion of the judges in the superior courts of record, it ought never to be allowed in local or inferior jurisdictions, such as the quarter sessions; where prosecutions for assaults are by this means too frequently commenced, rather for private lucre than for the great ends of public justice. Above all, it should never be suffered where the testimony of the prosecutor himself is necessary to convict the defendant; for by this means the rules of evidence are entirely subverted: the prosecutor becomes in effect a plaintiff, and yet is suffered to bear witness for himself. (*See* "*Award*," Vol. I.)

Sometimes the prosecutor and defendant agree before the defendant pleads to the indictment; and then the defendant comes into court in his proper person, and pleads guilty to the indictment; and upon proving, by a subscribing witness, a general release executed by the prosecutor, the defendant submits to a small fine, such as the court is pleased to impose. (*Cro. Cir. C.* 21.)

There are frequent prosecutions at the sessions for trifling assaults; in which case it is advisable for a defendant not to put himself to the expense of trying the indictment, but to give notice to the prosecutor that he intends to plead guilty to the indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant: but the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation. (*Cro. Cir. C.* 22.)

For information as to traverses generally, *see title* "*Traverse*," Vol. VI. And as to the trial in general, *see post*, "*Trial*," Vol. VI.

4. In Hearing of Appeals.

See the subject of appeal treated of under *title* "*Appeal*," Vol. I. In appeals.

IV. The Jurisdiction, Powers, and Duties of the Sessions.

1. *In what Matters.*
2. *Their Judgments.*
3. *Special Cases.*
4. *Costs.*

1. In what Matters.

The court of quarter sessions has a jurisdiction criminal and civil, given to it by the commission of the peace itself, as settled under the 18 Edw. III. st. 2, and 34 Edw. III. c. 1, and by the express provisions of numerous statutes. Criminal and civil.

1. *Criminal Jurisdiction.*

As far as respects its jurisdiction to hear and determine indictments, it appears to derive its origin from the 18 Edw. III. c. 2, and 34 Edw. III. c. 1, already mentioned. 1. Criminal jurisdiction.

These statutes are as follow:—

18 Edw. III. st. 2, c. 2.—"Item, that two or three of the best of reputation in the counties shall be assigned keepers of the peace by the king's commission; and, at what time need shall be, the same, with other wise 18 Edw. III. st. 2, c. 2.

4. *The Jurisdiction, &c. of the Sessions.*

and learned in the law, shall be assigned by the king's commission to hear and determine felonies and trespasses done against the peace in the same counties, and to inflict punishment reasonably, according to law and reason, and the manner of the deed."

Who shall be justices of the peace, and what authority they shall have.

34 Edw. III. c. 1.—"First, that in every county of England shall be assigned, for the keeping of the peace, one lord, and with him three or four of the most worthy in the county, with some learned in the law, and they shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them, according to their trespass or offence: and to cause them to be imprisoned and duly punished, according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past, and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endamaged, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders. And also to hear and determine at the king's suit all manner of felonies and trespasses done in the same county according to the laws and customs aforesaid; and that writs of *oyer* and *terminer* be granted according to the statutes thereof made, and that the justices which shall be thereto assigned be named by the court, and not by the party. And the king will, that all general inquiries before this time granted within any seigniorities, for the mischiefs and oppressions which have been done to the people by such inquiries, shall cease utterly and be repealed; and that fines, which are to be made before justices for a trespass done by any person, be reasonable and just, having regard to the quantity of the trespass, and the causes for which they be made."

Justices of peace may hear and determine felonies and trespasses.

Commission of the peace

At first, as we have seen, (*ante, title "Justices,"* Vol. III.) the justices were only conservators of the peace, and the subsequent power to hear and determine, given by these statutes, means only that such an authority may be delegated to them by commission. (1 *Blo. Com.* 351; *R.* v. *Carter*, 1 *Stra.* 442.) For this reason it is that a caption of an indictment found at the sessions, must show that the commission gave the court jurisdiction over the offence, as this cannot be intended. (*Id.*) It has been said, that the commission of the peace was altered into the present form immediately after making those statutes (*Id.*); but some authors state, that it was settled as we find it at present by the judges about the thirty-third year of queen Elizabeth. (2 *Haw. c.* 8, *s.* 8.)

5 & 6 Vict. c. 38.

The jurisdiction of justices in general and quarter sessions of the peace, has been greatly limited and defined by a recent statute, 5 & 6 Vict. c. 38. By that act it is enacted. That "neither the justices of the peace nor the recorder of any borough shall at any session of the peace or at any adjournment thereof, try any person or persons for any treason, murder, or capital felony, or for any felony, which when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences; (that is to say,)

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or government, or against either house of parliament.
3. Offences subject to the penalties of præmunire.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury and subornation of perjury.
7. Making or suborning any other person to make a false oath,

affirmation, or declaration punishable as perjury or as a misdemeanor.

4. *The Jurisdiction, &c. of the Sessions.*

8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy, and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.
17. Stealing or fraudulently taking or injuring or destroying records or documents belonging to any court of law or equity, or relating to any proceedings therein.
18. Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate or any interest in lands, tenements, or hereditaments.

Much, however, concerning the jurisdiction over indictments may be still collected from the terms of the commission, which we shall here again set out, so far as it relates to the power of justices in sessions:—The first part of the commission will be found, *title "Justices,"* Vol. III. The second part is as follows:—

Form of commission as to sessions.

"*We have also assigned you, and every two or more of you (of whom any one of you, the aforesaid A. B., C. D., &c., we will shall be one), our justices, to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; and of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted, and also of all those who, in the aforesaid counties, in companies against our peace, in disturbance of our people, with armed force, have gone or rode, or hereafter shall presume to go or ride; and also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people; and also of all victuallers, and all and singular other persons, who, in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefore made for the common benefit of England, and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt, and also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who, in the execution of their offices about the premises, or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been or shall happen hereafter to be careless, remiss, or negligent, in our aforesaid county; and of all and singular articles and circumstances, and all other things whatsoever, that concern the premises, or any of them, by whomsoever and after what manner soever in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; and to inspect all indictments whatsoever so before you, or any of you, taken or to be taken, or before others, late our justices of the peace in the aforesaid county, made or taken, and not yet determined; and to make and continue processes thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed; and to hear and determine all and singular the felonies, poisonings, enchantments, sorceries, arts, magic, trespasses, forestallings, regratings, ingross-*

4. *The Jurisdiction, &c. of the Sessions.*

ings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed or ought to be done; and the same offenders and every of them, for their offences by fines, ransoms, amerciaments, forfeitures, and other means, as, according to the law and custom of England, or form of the ordinances and statutes aforesaid, it has been accustomed or ought to be done to chastise and punish.

"Provided always, that if a case of difficulty upon the determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in no wise be given thereon before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.

"And therefore we command you, and every of you, that to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that at certain days and places which you, or any such two or more of you as is aforesaid, shall appoint for these purposes, into the premises ye make inquiries, and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England; saving to us the amerciaments and other things to us therefrom belonging.

"And we command, by the tenor of these presents, our sheriff of W., that at certain days and places which you, or any such two or more of you as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you, as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises shall be the better known and inquired into.

"Lastly, we have assigned to you the aforesaid A. B., keeper of the rolls of our peace in our said county: and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments, aforesaid, that they may be inspected, and, by a due course, determined, as is aforesaid."

Comments on the commission.

We have also assigned you and every two or more of you.]—Here beginneth the second part of the commission, or the second assignment: all the business within which assignment belongeth to the sessions of the peace. (*Dalt. c.* 5.)

Must be two justices.

And by this it appeareth, that two justices may hold a sessions, but that one justice cannot. (*Cromp.* 6, 7.)

Justices of quorum.

Of whom any one of you the aforesaid A. B., C. D., &c. we will shall be one.]—This clause, which gives power to two or more justices to hear and determine offences, requires that at least one of those justices be of that select number, which is commonly termed of the *quorum* (from that word in the Latin commissions, *Quorum,—unum esse volumus*). For those of the *quorum* were wont to be chosen specially for their knowledge in the laws; and this was it which led the makers of several ancient statutes expressly to enact, that some learned in the laws should be put into the commission of the peace; and (to say the truth) all statutes that require the presence of the *quorum* do tacitly signify such a learned man. For, albeit that a discreet person (not conversant in the study of the laws) may sufficiently follow sundry particular directions concerning the service of the peace, yet when the proceedings must be by way of presentment or indictment, upon the evidence of witnesses, and oaths of jurors, and by the order of hearing and determining according to the straight rule and course of the law, it must be confessed that learning in the law is very necessary. (*Lamb.* 48, 49.)

But learning being now greatly advanced and improved since the first institution of this office, this distinction is not of much use, but all or most of the justices are now equally assigned to be of the *quorum;* and by the 26 Geo. II. c. 27, no act, order, adjudication, warrant, indenture of apprenticeship, or other instrument done or executed by two or more justices, which doth not express that one or more of them is of the *quorum* (although the statutes respectively require that one of the justices shall be of the *quorum*), shall be impeached, set aside, or vacated, for that defect only.

And by the 7 Geo. III. c. 21, in cities, boroughs, towns corporate (*a*), franchises, and liberties, which have only one justice of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, done or executed by two or more justices qualified to act therein, shall be valid and effectual in law, although neither of the said justices are of the *quorum*. 4. *The Jurisdiction, &c. of the Sessions.* 7 Geo. III. c. 21.

And now the 4 Geo. IV. c. 27, after reciting the 7 Geo. III. c. 21, "and whereas it is expedient that the provisions of the said act should be extended to such cities and other jurisdictions as have two or any other limited number of justices of the quorum qualified to act within the same;" enacts, "That, from and after the passing of this act, in all cases where the number of justices of the peace for any city, borough, town corporate (*a*), franchise, liberty, or other local jurisdiction is limited, and any one, two, or more of such justices only are of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, which shall be made, done, or executed, either in or out of the general quarter sessions or petty sessions, or any adjournment thereof, by virtue of any charter or grant, or by virtue of any act of parliament made or to be made, by any two or more justices of the peace acting within the same, though neither of the said justices be of the *quorum*, shall be valid in law, to all intents and purposes, as if the said justices had been of the *quorum*; any grant, charter, law, or custom to the contrary thereof in anywise notwithstanding." 4 Geo. IV. c. 27.

In *The Queen* v. *The Bailiffs of Ipswich*, 2 *Ld. Raym.* 1232, Lord *Holt*, C. J., lays it down, that unless a commission of the peace nominates a quorum, all the justices appointed by it must attend at a sessions. (*And see* 9 *B. & Cres.* 859.)

By the oath of good and lawful Men.]—That is, by a jury sworn. Jury sworn.

Of all and all manner of Felonies.]—That is, either by the common law or by statute. (*Cromp.* 8.)

Felonies.]—This must now be taken subject to the exceptions made by 5 & 6 Vict. c. 38; but even before that act, it was held, that as treason was not mentioned in the commission, the quarter sessions had no jurisdiction to try it; (*Talfourd's Dick. Q. S.* 140;) and though they had the power it was not the practice to try capital felonies. Felonies.

An indictment lies at the quarter sessions for lighting fires on the coast, contrary to 47 Geo. III. sess. 2, c. 66; for, though in one section "the general quarter sessions" is omitted, yet it being in other parts of the act, the omission was merely a mistake. (*R.* v. *Cock*, 4 *M. & Sel.* 71; *see further, Archb. Sessions, p.* 6.) When sessions included in description of courts.

Poisonings.]—The word in the Latin commissions was *veneficia*; and before the 9 Geo. II. c. 5, which abolisheth witchcraft, was in the English translations rendered witchcrafts. Poisonings.

Enchantments, Sorceries, Arts, Magic.]—These also are abolished by the said statute, s. 3, which enacts, that no prosecution shall thereafter be commenced against any person for witchcraft, sorcery, inchantment, or conjuration. Witchcraft, &c.

And, from the words continuing in the commission when the crime itself is abolished, we may observe the averseness in the superior courts from altering ancient forms.

Trespasses.]—This is founded on the 34 Edw. III. c. 1, which enacts that the justices assigned shall have power to restrain the offenders, rioters, and all other barrators, and to chastise them according to their trespass or offence. The word for trespasses, in the old Latin commissions, is *transgressiones*. Trespasses.

And upon this Mr. *Hawkins* observes, that the word trespass is of very general extent, and in a large sense not only comprehends all inferior All inferior offences.

(*a*) See now the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, *title* "*Corporation*," Vol. II.

4. *The Jurisdiction, &c. of the Sessions.*

offences, which are properly and directly against the peace, as assaults and batteries, and such like, but also all others which are so only by construction, as all breaches of the law in general are said to be.

Conspiracies.

The term *trespasses* in the commission was held not only to include direct breaches of the peace, but also all such offences as have *a tendency thereto*, and, on that ground, conspiracies (previous to the passing of 5 & 6 Vict. c. 38) have been holden to be cognizable by the sessions, not as actual breaches of the peace, but as tending to produce them. (*R.* v. *Higgins*, 2 *East*, 22, 23; *R.* v. *Rispal*, 1 *Bla. Rep.* 368; 3 *Burr.* 1320, *S. C.*; *Haw. b.* 2, *c.* 8, *s.* 63; *Dick. Sess.* 105.)

Solicitations.

And, for the same reason, to solicit a servant to steal his master's goods is a misdemeanor, though it be not charged in the indictment that the servant stole the goods, nor that any other act was done, except the soliciting and inciting; and such offence is indictable at the sessions, having a tendency to a breach of the peace. (*R.* v. *Higgins*, 2 *East*, 5.)

Cheats.

So they have a jurisdiction over cheats in general. (*R.* v. *Brayne, and R.* v. *Beale*, 1 *East*, 183, *n.*)

Gaming.

But they cannot determine an indictment for gaming, on the 18 Geo. II. (*R.* v. *Frederick*, 2 *Ld. Ken.* 116. *See* "*Gaming*," Vol. III.)

Assaults.

But their jurisdiction extends to assaults and batteries, (*Haw. b.* 2, *c.* 8, *s.* 63; *Bac. Ab. Justices of the Peace, E.* 3;)

Barratry, &c.

barratry, (2 *Saun.* 308, *n.*; 2 *Haw. c.* 8, *s.* 65; *Bac. Ab. Justices of Peace, E.* 3;) night-walking, and haunting of bawdy-houses, (2 *Haw. c.* 8, *s.* 64).

Forestallings, &c.

Forestallings, Regratings, Ingrossings.]—Over these offences, the justices in sessions had jurisdiction given to them by the 5 & 6 Edw. VI. c. 14, which is now repealed; but the same still continue offences punishable by indictment at the common law. (*See* "*Forestalling*," Vol. III.)

Extortions.

Extortions.]—The intent of this word is, to inquire of those who have done excessive wrongs; for wrong done by any one is properly trespass, but excessive wrong done by any one is called extortion; and this is more properly in officers, as sheriffs, mayors, bailiffs, escheators, and other officers whatsoever (as well spiritual as temporal), who, by colour of their office, have done great oppression and excessive wrong to the king's subjects, in taking excessive rewards or fees for doing their offices. (*Cromp.* 8.)

The justices have no express power given to them over this offence by any statute; upon which Mr. *Hawkins* observes, that justices of the peace have jurisdiction of all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not; for that all such crimes are either directly or at least by consequence and judgment of law against the peace; and upon this ground principally, he says, as he apprehended, it was lately resolved, that they may take an indictment of extortion. (2 *Haw.* c. 8, *s.* 39.)

Other crimes, &c.

And of all and singular other Crimes and Offences of which the Justices of our Peace may or ought lawfully to inquire.]—Which general words seem to include the vast number of offences, over which they have a jurisdiction given them by many statutes, and which are not particularly mentioned in the commission.

Riots, &c.

And also all of those who in Companies against our Peace in Disturbance of our People with armed Force have gone or rode.]—By these words they are to inquire of riots, routs, and all unlawful assemblies. (*Cromp.* 8. *See ante*, "*Riot.*")

Weights and measures.

Weights or Measures.]—This clause was first established by the 34 Edw. III. c. 5. And they have further power given herein by several subsequent statutes, all which statutes must be strictly pursued in relation to the several offences. (*See post*, "*Weights and Measures*," Vol. VI.)

Selling victuals.

Selling Victuals.]—Over this they had a jurisdiction given to them by the 2 & 3 Edw. VI. c. 15, intituled, "The Bill of Conspiracies of Victuallers and Craftsmen." But that act is repealed by the 5 Geo. IV. c. 95.

Officers misbehaving themselves.

And also of all Sheriffs, Bailiffs, Stewards, Constables, Keepers of Gaols, and other Officers, who in the execution of their Offices have unduly

behaved themselves.]—This clause is as ancient as the 4 Edw. III. c. 2, on which it is founded.

4. *The Jurisdiction, &c. of the Sessions.*

And it hath been suffered to remain in the commission, not as of any necessity at all (since it is incident to every court of record to do correction upon whatsoever officers and ministers do serve them), but only for the plainer declaration of the power of these justices in that behalf, and for the more assured terrifying of such as shall, either of contempt or negligence, do that which is amiss. (*Lamb.* 49; *see R.* v. *Jarum*, 7 *D. & R.* 163, *post.*)

Indictments laid before others.

And to inspect all Indictments as before you taken.]—But they cannot proceed upon indictments taken before coroners, or justices of oyer and terminer or gaol delivery, but on indictments taken before the sheriff in his tourn they may proceed. (*Hale's Sum.* 169.)

Or before other our late Justices.]—This is founded on the 11 Hen. VI. c. 6, which enacts that no indictment, plea, suit, or process, shall be discontinued by a new commission; but the justices in the new commission, after they shall have the records of the same pleas and processes before them, shall have power to continue the said pleas and processes and to hear and finally determine the same, as the former justices might have done.

Processes.

And to make and continue Processes.]—This is by *venire, distringas, capias*, or *exigent*, as the case shall be. And it differs from a warrant in that a warrant is only to attach and convene the party before indictment, and may be either in the name of the Queen or of the justice; but the process issues after indictment, and must be in the name of the Queen only. (*Dalt. c.* 193.)

Party not appearing, &c.

Until they can be taken, surrender themselves, or be outlawed.]—For the process is sent out to this end, that either the party shall come in to answer and to be justified by the law; or else that he shall, for his contumacy, be deprived of the benefit of the law. (*Lamb.* 521.)

Outlawry.

Or be outlawed.]—It is observable that the power of the justices stops here, and goes no further; so that they cannot make out a *capias utlagatum*, but the outlawry must be certified into the Queen's Bench. (*Lamb.* 521; 2 *Hale*, 52.)

But by 12 *Rep.* 103, they that have power to award process of outlawry have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction.

Power to hear and determine.

Hear and determine.]—This power was first given to them by the 18 Edw. III. st. 2, c. 2, and afterwards confirmed and enlarged by divers other statutes.

How far a court of oyer and terminer.

Yet this clause doth not in propriety make the justices of the peace justices of oyer and terminer, because that is a distinct commission; and, therefore, a statute, limiting an offence to be heard and determined before justices of oyer and terminer, gives not the power therein to justices of the peace. (*Hale's Sum.* 165, *infra.*)

And thereupon, it is said, that although they have power to hear and determine felonies, yet they cannot deliver a person suspected thereof by proclamation (as justices of gaol delivery may) until an inquisition taken; but if an inquisition be taken, and an *ignoramus* found, they may deliver him, as it seemeth. (2 *Hale*, 46, 47.)

Likewise, although commissioners of oyer and terminer may indict and try at the same sessions, yet it hath been ruled otherwise in cases of justices of the peace, unless by consent: but certainly constant usage and learned opinion must give that exposition upon those resolutions, that it must extend only to popular actions or indictments for misdemeanors, and not to cases of felony. (2 *Hale*, 48.)

Power to fine, &c., and punish.

By Fines, Ransoms, Amerciaments, Forfeitures, and other Means, to chastise and punish.]—Hereby the justices are now armed with far more ample authority and power than the ancient conservators of the peace were; for they had no power to convene the offender before them, nor to

1. *The Jurisdiction, &c. of the Sessions.*

examine, hear, or determine the cause, nor to punish, except in some few cases, as mentioned before. (*Dalt. c.* 6.)

But the justices may not award any recompense to the party wronged, otherwise than by persuasion. (*Dalt. c.* 5.)

Nevertheless, these words are inserted, not as of necessity (for the punishment of all offenders is implied in the word *determine*), but for the plainer declaration of the justices' power, and for the more assured terrifying of offenders. (*Lamb.* 49.)

In difficult cases not to give judgment.

If a Case of Difficulty shall happen to arise.]—That is, a difficulty in point of law. (*Cromp.* 6; *vide post*, 980.)

Then let Judgment in nowise be given.]—But yet, if they list to proceed without the judge's advice, their judgment is not void: but it standeth good and effectual, until it be reversed by a superior court. (*Lamb.* 50.)

Days of holding sessions.

At certain Days and Places.]—That is, when they hold their sessions, which they are empowered and required to do by several statutes.

Custos rotulorum.

Lastly, we have assigned you, the aforesaid A. B., Keeper of the Rolls.] This is in pursuance of the 37 Hen. VIII. c. 1, which enacts, that the lord chancellor shall, by commission, assign such person to be *custos rotulorum*, as the king shall by writing, under his hand, appoint. (*See ante*, "*Custos Rotulorum*," Vol. II.)

General observations

It seems to be now clear that justices of the peace may try offences, though created by statute since the institution of their office, unless there be some special direction that the offence shall be heard and determined before another tribunal. (*R.* v. *Cock*, 4 *M. & S.* 71.)

Where, indeed, a statute limits an offence to be tried before justices of *oyer and terminer*, the sessions cannot try it; for, though justices of the peace are authorized to hear and determine, they are not what the law intends by justices of *oyer* and *terminer*, as there is a distinct commission of that name. (1 *Hale*, 165.) Where, however, a statute creates a misdemeanor, and directs that the offender shall be committed unto the next court of oyer and terminer, great session, or gaol delivery, and in case of indictment found, shall plead, and be tried without traverse, he may be prosecuted at the court of quarter sessions. (*The King* v. *Cock*, 4 *M. & Selw.* 71.)

Central Criminal Court jurisdiction.

Central Criminal Court.]—As to the jurisdiction of the Central Criminal Court, *see* "*Central Criminal Court*," Vol. I.

Borough sessions jurisdiction

Borough and Corporate Town Sessions, &c.]—As to the jurisdiction of sessions held in boroughs and towns corporate, &c, since the Municipal Corporation Act, *see* "*Corporations*," Vol. II.

Jurisdiction of sessions in London, Westminster, Middlesex, Essex, Kent, and Surrey, restrained.

Jurisdiction of Sessions in London and Westminster, Middlesex, Essex, Kent, and Surrey, taken away over certain Offences.]—"The justices of the peace acting in and for the said cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, shall not, at their respective general or quarter sessions of the peace or any adjournment thereof, try any person or persons charged with any capital offence, or with any of the following offences committed or alleged to be committed within the limits of this act, (*see* sect. 2); that is to say, house-breaking, stealing above the value of 5*l.* in a dwelling-house, horse-stealing, sheep-stealing, cattle-stealing, maliciously wounding cattle, bigamy, forgery, perjury, conspiracy, assault with intent to commit any felony, administering or attempting to administer poison with intent to kill or to do some grievous bodily harm, administering drugs or other things, or doing any thing with intent to cause or procure abortion, manslaughter, destroying or damaging ships or vessels, the breaking of shops, warehouses, counting-houses, and buildings within the curtilage of dwelling-houses, killing sheep with intent to steal the carcases, the uttering of all forged instruments, and the various offences enumerated in the 1 Will. IV. c. 66, (*title* "*Forgery*," Vol. III.,) and all the offences relating to coin enumerated in the 2 Will.

IV. c. 34, (*title* "*Coin*," Vol. I.,) the abduction of women, bankrupts not surrendering under their commission or concealing their effects, breaking down bridges and banks of rivers, taking rewards for helping to stolen goods, personating any officer, seaman, or other persons in order to receive any wages, pay, allowance, or prize money due or supposed to be due, or any out-pensioner of Greenwich hospital in order to receive any out-pension allowance due or supposed to be due, sending threatening letters and using threats to extort money, larceny on navigable rivers and canals, and stealing and destroying goods in progress of manufacture, and larcenies after a previous conviction, embezzlement, larceny by clerks and servants, and receivers of stolen goods, whether such person or persons shall be charged as principal offenders or as accessories before or after the fact." (4 & 5 Will. IV. c. 36, s. 17. *See* "*Central Criminal Court*," Vol. I.)

4. *The Jurisdiction, &c. of the Sessions.*

The jurisdiction of the sessions of the peace as to *taking* or *finding* indictments is not, it will be seen, affected by the above statute; the sessions may proceed as heretofore, up to the taking of the indictment, in all the cases before enumerated as were before within their jurisdiction, but the *trial* must take place in the Central Criminal Court.

By 5 & 6 Vict. c. 38, s. 1, it is provided, "That nothing in that act contained shall be construed to give authority to the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, to try any person or persons for any offence committed or alleged to have been committed within the jurisdiction of the Central Criminal Court, which such justices are restrained from trying under 4 & 5 Will. IV. c. 36."

5 & 6 Vict. c. 38.

2. *Civil Jurisdiction.*

The *civil* jurisdiction of the court of quarter sessions may be said to consist of that part of their business which is entirely submitted to the judgment of the court, without the intervention of the jury. This, it may be seen, is noticed slightly in the commission, but by far the greater part of the civil business of the sessions comes before the justices as a court of appeal deriving their authority from various statutes. This appellant jurisdiction extends over penal convictions, orders of justices, and matters connected with the administration of the poor laws, the vagrant laws, and the highway and a variety of other acts; and is discussed, in its various branches, through the titles of this work. On the subject of appeal itself, generally one of the most difficult and important on which the sessions are required to determine, information will be found under *title* "*Appeal*," Vol. I.

2. Civil jurisdiction.

Appellant.

Besides this appellant jurisdiction, the sessions have, in some matters, an original jurisdiction. They have, in general, an original jurisdiction to do whatever may be done by two magistrates, except where the statute empowering the magistrate to act gives an appeal to the sessions.

Original.

This jurisdiction is most usually exercised in cases of apprenticeship, in the allowance of articles of the peace, and in the disposal of vagrants committed to the sessions for punishment. Information regarding these matters will be found under their respective titles.

In this place, it will only be necessary to give some cases illustrative of the general nature of this civil jurisdiction.

Where authority is given to two justices to do any act, the sessions may do it in all cases, except where appeal is directed to the sessions. (*Per Holt, C. J., R.* v. *Inhabitants of Boughton in Kent*, 1 *Ld. Raym.* 426.)

The sessions may do what two justices may.

But the sessions cannot suppress a licensed alehouse, unless for disorder. (*R.* v. *Randall*, 470.)

Though in certain and particular cases, an action may be brought at the assizes *or the sessions*, by the 5 & 6 Edw. VI. c. 14, 5 Eliz. c. 4, s. 39, and 21 Jac. I. c. 18, s. 12, an action, bill, or plaint, cannot, by the common law, be brought at the assizes or the sessions. (4 *T. R.* 115.)

Whether action, &c. lies in.

4. The Jurisdiction, &c. of the Sessions.

The 1 Jac. I. c. 22, gives certain penalties to be recovered (s. 46) by action of debt or information in the courts at *Westminster*; and the 50th section gives jurisdiction to the justices of assize of gaol delivery and of the peace to inquire of the premises, and to hear or determine the same; under the latter clause, the inferior courts can only proceed by indictment or presentment; and the informer may bring an action of debt in the superior courts at *Westminster*, notwithstanding the 21 Jac. I. c. 4. (*Id.*)

The true meaning of the 21 Jac. I. c. 4, is this: wherever, by any act then in force, the informer might have sued by action, bill, plaint, suit, or information, in the inferior courts, as well as in the courts at *Westminster*, he is confined to sue in the former. But as this statute gives no new jurisdiction to the inferior courts, the party may still sue in the courts at *Westminster*, for all those penalties which could not, before the passing of that statute, have been recovered in the inferior ones. (*Id.* 117.)

Whether they may issue a *capias utlagatum*.

The sessions may proceed to outlawry in cases of indictments found before them, and that by the common law; and in cases of popular actions, by the 21 Jac. I. c. 4. (*See "Information,"* Vol. III.) But they cannot issue a *capias utlagatum*, but must return the record of the outlawry into the Queen's Bench, and there process of *capias utlagatum* shall issue. (2 *Hale*, 52; *Lamb.* 521: *Dalt. c.* 193, *p.* 473.)

But they that have power to award process of outlawry have also a power to award a *capias utlagatum*, as incident to their authority and jurisdiction. (12 *Rep.* 103.)

Attachment.

The sessions cannot award an attachment for contempt in not complying with their orders; but the ordinary and proper method is by indictment. (*R.* v. *Bartlett*, 2 *Sess. Ca.* 176. *See ante*, "*Process*;" and as to the power of the sessions over witnesses, *see* "*Evidence*," Vol. II. p. 448. *R.* v. *Brownell*, 1 *Ad. & Ell.* 598.)

Compelling attendance of wit-

Fining bailiff not executing precept.

A charter of Car. II. gave to the lord of an ancient liberty the execution of all writs, processes, and precepts of his majesty within the liberty, and contained a *non intromittant* clause, restraining the sheriff from entering, "unless it touched his majesty or his crown, and unless upon the default of the bailiffs and officers of the lord:" Held, that by virtue of this charter, and the provisions of the statute 27 Hen. VIII. c. 24, s. 7, the lord's bailiff was bound to obey the sheriff's precept for returning jurors from the liberty to the quarter sessions; and that for disobedience to such precept, the justices at sessions had jurisdiction to impose a fine upon the bailiff. (*R.* v. *Jarum*, 7 *D. & R.* 163; 4 *B. & C.* 692, *S. C.*)

Fining a justice, &c. for non-attendance, &c.

It seemeth certain, that the sessions have no authority to amerce any justice for his non-attendance at the sessions, as the judges of assize may for the absence of any such justice at the gaol delivery; for it is a general rule, that *inter pares non est potestas*, it being reasonable rather to refer the punishment of persons in a judicial office, in relation to their behaviour in such office, to other judges of a superior station, than to those of the same rank with themselves. And therefore it seems to have been holden, that if a justice at the sessions, who is not of the *quorum*, shall use such expressions towards another who is of the *quorum*, for which, if he were a private person, he might be committed or bound to his good behaviour, yet the sessions hath no authority to commit him, or to bind him to his good behaviour; and yet it seems to be agreed, that if a justice give just cause to any person to demand the surety of the peace against him, he may be compelled by any other justice to find such security; for the public peace requires an immediate remedy in all such cases. (2 *Haw. c.* 8, *s.* 46; 1 *Stra.* 21.)

General power to fine for contempt.

The principle that *every* court has a power to fine for contempt was clearly established in the case of *The King* v. *Davidson*, 4 *B. & Ald.* 329. "No lawyer," said *Abbott*, C. J., in delivering his opinion on this case, "can doubt the power of every court to fine for contempt." And in the same case, *Bayley*, J., said—"Of the power of a judge to fine for contempt of court, I have not the least doubt; and I am of opinion, also, that the judge

alone is competent to determine whether what is done be or be not a contempt; and that neither this court, nor any other co-ordinate court, has a right to examine the question, whether his discretion, in that respect, was fitly and properly exercised." *Best*, J., also there said—"No man who pretends to any knowledge of the law can doubt, that a judge of a court of record has authority to fine or imprison for any contempt committed in the face of the court. From the earliest period of our history this authority has been exercised. The year-books record instances of such commitments, and there are similar instances in other books of reports. At those times when our ancestors have abolished or restrained improper authorities, they have not touched this, because they found it essential to the due administration of justice. A court of *nisi prius* is a court of record, and the judge presiding in it is, therefore, invested with the power of committing for contempt." (*See also R.* v. *Clement*, 4 *B. & Ald.* 218; "*Examination.*" Vol. II. p. 465, 470.)

4. *The Jurisdiction, &c., of the Sessions.*

All the cases on this subject with respect to the power of courts of record to fine and imprison for contempt, are collected together very ably by Mr. Justice *Wilmot*, with a view to a judicial opinion, in *The King* v. *Almon*, (*Wilmot's Notes*, 243).

It appears that the quarter sessions may fine a party guilty of contempt, though absent from the court at the time of committing it. (*Per Holroyd, J., R.* v. *Davison*, 4 *B. & Ald.* 233.)

Where there are several delinquents they must be fined separately and not jointly, except of necessity, as where a whole vill is to be fined. (*Morgan* v. *Brown*, 4 *A. & E.* 515.)

A court of gaol delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience to such order by fine. (*King* v. *Clement*, 4 *B. & Ald.* 218.)

Power to prohibit publication of proceedings.

The consent of parties that the sessions shall delegate their authority, concludes such parties, and gives validity to all acts of the sessions in consequence of such consent. (*R.* v. *Just. of Northampton, Cald.* 30; *S. P., R.* v. *Just. of Devonshire, Cald.* 32.) Without such consent the sessions cannot delegate their authority to a third party; (*R.* v. *Townsend*, 16 *Vin. Abr.* 417; *R.* v. *Harding*, 2 *Salk.* 477;) *e. g.*, they cannot award costs to be settled by the clerk of the peace out of sessions. (*R.* v. *Long*, 1 *Q. B. Rep.* 740.)

Sessions delegating their authority.

A justice cannot act at sessions, where a matter which concerns any office he may hold comes in question. This was decided in the case of *Foxham* tithing, in the county of *Wilts*. (2 *Salk.* 607.) A justice of the peace was surveyor of the highways, and a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption. By *Holt*, C. J.—"It ought not to be; as, if an action be brought by my Lord Chief Justice *Trevor* in the court of Common Pleas, it must be before *Edward Neville*, knight, and his associates, and not before *Thomas Trevor, &c.;*" and it was quashed. And in *R.* v. *Gudderidge*, 8 *D. & R.* 217, it was held, that a justice of the peace who is a rated inhabitant of a parish, cannot vote at the sessions, either upon the determination of an appeal against the accounts of the overseers of his parish, or upon the propriety of granting a case for the opinion of the court of Queen's Bench. See further as to this subject, "*Justices*," Vol. III. (*Great Chaste* v. *Kennington*, 2 *Stra.* 1173; *R.* v. *Yarpole*, 4 *T. R.* 71; *Reg.* v. *Cheltenham, Commissioners of Paving*, 1 *Q. B. Rep.* 467.)

Justice acting in a matter concerning himself.

The quarter sessions may apply the county stock to contest the legality of a fine imposed on the county for not repairing its gaol. (*R.* v. *Essex, Nolan*, 56.) But they cannot order the costs of a prosecution for a misdemeanor carried on under the direction of magistrates to be allowed out of the county rates. (*R.* v. *W. R. Yorkshire*, 7 *T. R.* 377.)

County stock.

Justices at sessions appointed a committee of twelve magistrates to inspect the state of a county bridge, and to make any new contract for repairing or rebuilding, to be executed by the clerk of the peace on behalf of the county.

County bridge.

4. *The Jurisdiction, &c. of the Sessions.*

Afterwards they made an order, adopting a contract for rebuilding proposed by the committee, and directed it to be prepared by the clerk of the peace, which contract having afterwards been executed by the clerk, the justices at a subsequent sessions confirmed all the resolutions of the committee, and ordered the clerk to perform their directions in respect to the contract. —The acts of the committee so confirmed are the acts of the sessions, and the authority given to the committee and exercised by them, is not such a delegation of power by the sessions as will invalidate their orders. (*R.* v. *Just. of Glamorganshire*, 2 *T. R.* 279; *Nolan*, 249, *S. C.*)

Clerk of peace, ee of, &c.

The sessions are not authorized to order the payment by the bridgemaster to the clerk of the peace of a per-centage on all money raised for the repair of bridges in a particular district, in lieu of all his fees for indictments, presentments, &c., for bridges within it; although such per-centage was claimed as an ancient fee, and had been paid without dispute for a long period of time. (*R.* v. *Houldgrave*, 1 *B. & Ald.* 312.)

The sessions have no jurisdiction, under 55 Geo. III. c. 51, s. 16, to make a prospective order for a compensation thereafter to be made to the clerk of the peace; and, therefore, where a county treasurer, in obedience to such an order, made the payment, and that payment was afterwards, by an order of sessions, allowed in his accounts, the court of King's Bench quashed so much of the order of sessions as allowed that item. (*R.* v. *G. Williams, Esq.*, 3 *B. & Ald.* 215.)

In the same case it was made a question whether, under the 55 Geo. III. c. 51, s. 16, the sessions have a power to make any compensation to the clerk of the peace.

Rates.

Justices, upon appeal from a rate to the quarter sessions, cannot make a new, but only quash the subsisting rate. (*R.* v. *St. Andrew's, Holborn*, 3 *Burr.* 1458.)

Overseers' accounts, &c.

The sessions have no original jurisdiction over overseers' accounts. (*R.* v. *Portsmouth*, 1 *W. Bla.* 395.)

So, they have no jurisdiction to make an original order for the late overseers of the poor to pay money to their successors. (*R.* v *Whitear*, 3 *Burr.* 1865.)

Highways.

So, orders upon surveyors of highways, to pass their accounts and pay over monies under the now repealed act, 13 Geo. III. c. 78, could not be made originally by the general quarter sessions. (*R.* v. *Hartshorn*, 2 *Burr.* 745.) *See* "*Highways*," Vol. III.

Bastards.

An original order of bastardy, before 4 & 5 Will. IV. c. 76, must have been made at the quarter sessions. (*R.* v. *Greaves*, 2 *Doug.* 632.) *See* "*Bastards*," Vol. I.

Poor-rate.

Where a person is overcharged in a poor-rate, the sessions may relieve him on appeal, and amend the rate by lessening the sum assessed on him under the 17 Geo. II. c. 38. (*R.* v. *Cheshunt*, 2 *T. R.* 623.) *See* "*Poor*," Vol. IV.

Apprentice.

And the sessions may order an apprentice to be discharged and money to be returned, though bound to a trade not mentioned in the act; but the order must state that the defendant appeared, or was summoned and made default; and that the master had received money with the apprentice. (*R.* v. *Aimes*, 1 *Bott's P. L.* 574.) *See* "*Apprentice*," Vol. I.

Dissenters.

The court of sessions is merely ministerial, as to registering meeting-houses under the Act of Toleration. (*R.* v. *Just. of Derbyshire*, 1 *W. Bla.* 606.) *See* "*Dissenters*," Vol. II.

Navigable river rate.

By the 10 & 11 Will. III. c. 8, the proprietors of navigation shares in the river Tone are created a corporation, with certain funds, and directed to keep an account of their receipts and disbursements, which shall every year be examined, stated, corrected, and allowed by the bishop of Bath and Wells, and the justices of the peace for the county of Somerset, or any five or more, at their first general quarter sessions after a certain day, at which time they are to direct a distribution of the surplus profits, if any: Held, that the sessions in one year have no authority to revise or correct any errors in the accounts upon which a balance was struck and allowed

at the sessions in any preceding year. (*R.* v. *River Tone Conservators*, 8 *T. R.* 286.)

4. *The Jurisdiction, &c. of the Sessions.*

2. Their Judgments, &c.

We have already, under *title "Appeal,"* Vol. I., considered many points of law and practice as to the judgments of the court of sessions; also, as to what justices may give their opinion therein; and as to judgments in general, *see "Judgment,"* Vol. III. A justice cannot vote in the judgment when interested in the matter, *ante*, 975.

In general.

The judgment or order must determine the matter, and if it merely state the evidence of the case, it will not suffice. (*R.* v. *Luffington*, 1 *Wilson*, 74; *R.* v. *Martley*, *Burr. S. C.* 120.)

Must be positive and in due form.

An order of sessions on stat. 11 Geo. II. c. 19. s. 3, for preventing frauds by tenants, was confirmed, although both offences of moving or concealing property were charged in the disjunctive. (*R.* v. *Middlehurst*, 1 *Burr.* 399.) *See ante, title "Order."*

An order was quashed for an uncertain reference to the county in describing the justices. (*R.* v. *Stepney*, *Burr. S. C.* 23.)

Quarter sessions are sufficiently described by the words "a general quarter sessions of the peace," without stating the caption. (*Slack* v. *Wilkins*, 3 *Tyrwh.* 158.)

The sessions are not compellable to give any reason for their judgment in the order they make, no more than any other court of law. (2 *Salk.* 607.) *See "Appeal,"* Vol. I.

Need not give reasons for.

Where a reason is assigned as the foundation of a judgment, all presumption or intention that the court went upon better grounds is excluded. (*R.* v. *Upton Gray*, *Cald.* 308.)

When the sessions come to a conclusion, which could only be arrived at upon the assumption of a particular fact, that conclusion shall be considered as amounting to a finding of that fact: as when it was a question whether there was a hiring and service for a year in the appellant parish, and the sessions confirmed the order, subject to the opinion of the court as to a settlement being there gained by hiring and service; it was holden that this was tantamount to a finding of a hiring and service for a year in that parish; and that such finding ought not to be disturbed, if there were any premises to warrant it. (*See R.* v. *St. Andrew the Great*, 3 *M. & R.* 374; 8 *B. & Cres.* 664, *S. C.*)

It is questionable whether, when the sessions state facts fully and particularly, from whence they infer fraud, the court of Queen's Bench can draw their own conclusion from those facts, without having regard to the adjudication of the court of sessions. (*R.* v. *Woodland*, 1 *T. R.* 261; *see R.* v. *Tillingham*, 1 *B. & Adol.* 180.)

The court will not intend any thing to vitiate an order of sessions. (*R.* v. *Higher Walton*, *Burr. S. C.* 162.) And when a matter appears to be doubtful on the face of the order, the court will intend that it has been done right. (*R.* v. *Meyfield*, *Burr. S. C.* 453.)

Intendment against judgment of sessions.

By *Holt*, C. J., the sessions is all as one day, and the justices may alter their judgments at any time, whilst it continues. (*St. Andrew's, Holborn*, v. *St. Clement Danes*, 2 *Salk.* 606; *Thornby* v *Fleetwood*, 1 *Stra.* 383.) *See "Amendment,"* Vol. I.

Amendment of.

A wrong entry of judgment by mistake, and not corrected during the sessions, is no ground for a re-hearing. And where one judgment is entered at the sessions for another, the Queen's Bench cannot interfere, unless the mistake is apparent on the record. (*R.* v. *Justices of Leicestershire*, 1 *M. & Sel.* 442.)

Mistake in.

A bill of exceptions will not lie to the justices in sessions on an appeal. They are in all such cases the absolute judges of the facts; and they may not, even if they desire it, remit any question of fact to a superior tribunal. (*R.* v. *Preston*, *Burr. S. C.* 77.)

Bill of exceptions will not lie.

4. *The Jurisdiction, &c. of the Sessions.*

Where court divided in opinion.

In the case of *Thornby* v. *Fleetwood*, T. 6 Geo. I., which was upon a writ of error in the King's Bench, brought against a judgment in the Common Pleas, the court was equally divided, whereupon it was considered what was further to be done. And after several expedients which were judged impracticable, the parties at last consented that the judgment should be affirmed, so that the case thereupon might come before the House of Lords for a final determination; and *Pratt*, C. J., delivered the opinion of the court thus:—"The plaintiffs in error move us for an affirmance; as to that, you see the court is divided, and there can be no rule but in this case, because the party against whom it is to be affirmed is desirous and willing that it should be so. We are all of opinion, that upon his consent the judgment of the Common Pleas may be affirmed. But, lest this be brought in future ages as a precedent of an affirmance upon a division, we direct the officer to make the rule special in this case, on recital of the difference in opinion amongst the judges, and the consent of the party." (*Thornby* v. *Fleetwood*, 1 *Stra.* 383, 384.)

Or, if the court shall be still divided, as so it may happen in small counties or towns corporate, where the justices are but few, or where the number is reduced by reason of the rest being interested, in order that the case may not be hung up for ever, it may be advisable (according to the course prescribed in the case of *Thornby* v. *Fleetwood*, above mentioned) for the court, by consent of the parties, to affirm or quash, and thereupon state the case especially, to be laid before the judges of assize, or rather before the court of Queen's Bench, for the judges of assize are oftentimes sufficiently employed with the proper business of the circuit, without being importuned with these matters of inferior consequence.

Where, upon an appeal against an order of removal, the justices at sessions were equally divided, and made an order that the hearing of the appeal should be adjourned, one of the justices who voted in favour of the respondent parish, being a rated inhabitant of that parish, an application for a *certiorari* to remove the order of sessions, in order that it might be quashed, was refused, on the ground that, even if the order of sessions was erroneous, the court had no jurisdiction to review it. This was decided in the case of the *King* v. *The Justices of Monmouthshire*, 8 *B. & C.* 139; *S. C. nom. R.* v. *Uske*, 2 *M. & R.* 172. "The late decisions," said Ld. *Tenterden*, in delivering the opinion of the court on this question, "establish, that we cannot assume to ourselves the jurisdiction of a court of error, and revise the judgments of the court of quarter sessions. Here a judgment has been pronounced by the court of quarter sessions, relating to a subject-matter over which that court had jurisdiction; and, assuming that judgment to be erroneous, I think we have not jurisdiction, as a court of error, to review it."

A case from the quarter sessions stated, that the justices being equally divided in opinion, the chairman gave a casting vote in favour of the order, which was confirmed accordingly: that on the following day the appellant's counsel protested against the legality of the decision: that the "question" was then argued on both sides; and that the justices then present "determined to adhere to" the former decision:—Held, that although the proceeding on the first day was irregular, the court of Queen's Bench would not assume that the decision on the second day was not a judgment on the merits. And per Ld. *Denman*, in case of an equality of votes, the order of the justices would stand.* (*Reg.* v. *Hadbury*, 10 *A. & E.* 706.)

The court will not intend anything to vitiate an order of sessions. (*Rex* v. *Higher Walton*, *Burr. S. C.* 162; *Rex* v. *Moufield*, *Burr. S. C.* 453; *R.* v. *Swansea Harbour* (*Trustees*), 8 *A. & E.* 439.)

Sessions sole judges of propriety of entry of verdict.

Upon the trial of an indictment at the sessions, the court is the sole judge of the propriety of the entry of the verdict; where, therefore, upon a special finding by the jury amounting to an acquittal, the chairman directs a verdict of guilty to be entered, the court of Q. B. will not grant a *mandamus* requiring the minute of the verdict to be altered according to

fact. The only course open to the prisoner is, it seems, to apply to the crown for a pardon. (*R.* v. *Justices, Suffolk*, 3 *N. & M. M. C.* 221; 5 *N. & M.* 139; *Rex* v. *Hairs*, 3 *A. & E.* 725.)

4. *The Jurisdiction, &c. of the Sessions.*

We have already noticed the effect of a judgment of sessions, as to how far it is conclusive on the court of Queen's Bench and parties, &c. (See "*Appeal*," Vol. I. p. 167; "*Evidence*," Vol. II. p. 403.)

How far conclusive, &c.

The court of Queen's Bench will take cognizance of *a case reserved by the sessions accompanying the proceedings so removed*: and where the sessions, upon proof that the appellant had received from the clerk of the convicting magistrates a copy of his conviction, signed and sealed by such justices, purporting on the face of it to have been made upon the information of B. and C. (though such copy was drawn up on the back of the paper which contained the information of A., the true informer, B. and C. being only the witnesses who had been examined in support of the charge, and though the same justices had returned to the sessions, to be filed of record, a regular conviction of the same date, signed and sealed by them, on parchment, stating it to have been made on the information of A., and supported by the evidence of B. and C., according to the truth of the case), had quashed the latter conviction so returned by the justices, as being at variance with the minutes of the conviction delivered to the appellant, without entering into the merits of the case, upon a preliminary objection taken by the appellant, this court quashed the order of sessions generally; thereby setting up again the regular conviction, considering that the variance arose from the mere mistake and irregularity of the justices' clerk, and that the appellant was not really surprised by it, but had waived his appeal on the merits. (*R.* v. *Allen*, 15 *East*, 333.)

When the sessions adjudge a place to be a vill by reputation, as a substantive fact, the court of Queen's Bench is precluded from going into the question, notwithstanding the sessions state all the evidence particularly on which they formed their opinion. (*R.* v. *Ronton Abbey*, 2 *T. R.* 207.)

If the sessions draw a conclusion of fact, that the taking of a tenement is fraudulent, or that it does not amount to 10*l.* per annum, it is decisive in the court of Queen's Bench, though they state all the facts, and refer the consideration of those questions to this court. (*R.* v. *Lanwinnio*, 4 *T. R.* 473; *Nolan*, 19, *S. C.*)

Though the sessions find that certain persons in the township were possessed of visible stocks in trade there, and were personally liable to be rated in respect thereof, if by law such property were liable to be rated; yet, if they also state that they were not satisfied from the evidence offered before them that there was any surplus profit on such stocks, by which they could amend a rate which omitted them, that concludes the question. (*R.* v. *Macdonald*, 12 *East*, 324.)

Record of, right of party to have it made up properly.

A party found guilty by a jury at a session irregularly holden, is entitled to have the record of the proceedings correctly made up according to the fact, and the court of Queen's Bench will grant a *mandamus* to the justices to make up such record. (*R.* v. *Justices of Middlesex, in Re Bowman*, 5 *B. & Adol.* 1113.)

Mandamus for execution.

A *mandamus* to the quarter sessions will go, commanding them to issue such process of execution where there has been no delay in making the application, or the delay has been satisfactorily accounted for. (*R.* v. *Justices of Warwickshire*, 4 *Nev. & Man.* 370; 1 *Harr. & W.* 18, *S. C.*)

A statute taking away *certiorari* will not prevent the court of Q. B. from setting aside the judgment of an inferior court in a case of malversation. (*R.* v. *Cheltenham* (*Commissioners of Paving*), 1 *Q. B. Rep.* 467.) *See* "*Certiorari*," Vol. I.

4. *The Jurisdiction, &c. of the Sessions.*

3. Of stating a Special Case, and Proceedings on.

Reference to judge of assize.

Mr. *Dickinson* observes, that a reference to the judge of assize, either of the whole case, or of some point of legal difficulty involved in it, used formerly to be a common practice, but is, of late, fallen much into disuse. For this change many reasons might be adduced, but they are unnecessary here.

Special case.

If any particular circumstances should make this mode eligible, the right still continues; but it has generally given place to a more eligible one, which is that of stating a special case for the determination of the court of Queen's Bench. (*Talf. Dick. Sessions*, 902.) Without such special case, the court of Queen's Bench has in general no jurisdiction to review the judgment of a court of quarter sessions. (*R.* v. *Allen*, 15 *East*, 333; *R.* v. *Carnarvon Justices*, 4 *B. & Ald.* 86.) But where the matter is doubtful, it is very blameable in the justices to refuse to state a special case. (*R.* v. *Preston-on-the-Hill*, *Burr. Sess. C.* 77.)

The sessions do not always refer the whole case to the judge of assize; sometimes they refer only a particular point, and reserve the final determination of the whole matter to themselves. (*R.* v. *Tedford*, 2 *Burr. S. C.* 57; 2 *Sess. Cas.* 243.)

When the special case is granted, the object is carried into effect by the counsel agreeing to a statement of facts, which are usually corrected and settled by a reference to the chairman's notes. (*Id.*)

The case so settled, is to be signed by the junior counsel on each side. If no counsel are employed, or if they cannot agree upon a case, even with the assistance of the chairman, the latter may, with the concurrence of a majority of the justices on the bench, state and sign a special case himself. (*Id.*)

Form of the case.

There is no specific form or precedent, according to which a special case must be drawn; but, nevertheless, there are certain rules to be collected from a long succession of determinations, which are, in substance, as follow:

The law of the case.

—The justices, with regard to the civil business of the court, by the summary jurisdiction which is given to them, it has been observed, are placed in the situation of jurors, and judges, conjointly. They are to elicit the facts from the evidence, as jurors would do, and they are to judge of the law arising out of those facts in the common course, if they think fit. Out of this position arise two conclusions: viz. first, that they are not compellable to grant a special case, if they entertain no doubt (*a*) whatever of the law: and therefore, though it is certainly, in point of candour, right to comply with the request of the litigant parties by doing so, where any reasonable doubt on the subject is suggested, they will best consult the interests of the public by refusing it where they believe the application to arise out of mere obstinacy, or a spirit of litigation; and should always refuse it, unless they entertain serious doubts. (*Per Bailey, J., in The King* v. *Burbach*, 1 *M. & Sel.* 376.) Secondly, that their authority to judge of the law is the only one which in these cases they reserve for the superior court; whence it follows, that the facts make no part of the subject-matter on which the court above are to exercise their discretion, and therefore, having been found by the justices, they must be specifically stated in the case, and not the evidence from which they were deduced. (*Burr.* 120, *S. C.*) A very few examples may suffice for illustration. On an appeal respecting a pauper's settlement, where the question depends on an equivocal hiring, or a doubtful service for a year, the fact is to be deduced from the evidence, such as it may be, one way or the other, by the justices; and not the evidence, from which they draw their conclusion, stated. (*R.* v. *Hobbear*, 1 *E. R.* 73.) So, whether a master gave a particular consent to his apprentice to serve a third person, is a matter of fact, which, let it rest on testi-

The facts.

(*a*) "The magistrates ought not to be induced to send up cases for our opinion, if they have no doubt upon the question in their own minds, in order to avoid incurring unnecessary expenses." (*Per Bailey, J., R.* v. *Inh. of Darley Abbey*, 14 *East*, 285.)

mony ever so ambiguous, must be found, and not left doubtful on the face of the statement. (*Burr.* 682, *S. C.*) So, in a question of settlement by residing on an estate, the session must state the interest which the pauper took, whether he came in by descent or by purchase; and if the latter, the price of such purchase, that it may appear on the face of the statement, that it was such a purchase as will confer a settlement. (*R.* v. *Warblington*, *T. R.* 241.)

4. *The Jurisdiction, &c. of the Sessions.*

Fraud is a fact. This, therefore, like all other matters of fact, if it make any part of the case, to influence the opinion of the justices, must be specifically found by them, and stated accordingly; for it is not enough to state such evidence, though clearly leading to the most palpable conclusion of fraud, for the court above to draw such conclusion. (*Per Buller, J.*, in *The King* v. *Fillongley*, 1 *T. R.* 461.) In some cases, the evidence and the conclusion have both been stated, to which there is no objection in point of form; but it leads to an obvious inconvenience in point of practice, that if the court above should differ from the sessions as to the conclusion, they could not regularly interfere; and that, in appearance, an opinion is asked, which the court cannot judicially give. (*Burr. S. C.* 57, 171; *Talf. Dick. Sess.* 905.)

Fraud.

Facts must be specifically found and stated.

The sessions on the case sent should state the conclusion of fact, which they draw from the evidence, and not the evidence itself. (*R.* v. *St. Cuthbert Wells*, 3 *Nev. & M.* 100.)

Where, upon a special case, facts are stated which warrant the judgment of the court below, but that court has drawn an inference which is not warranted by the statement, the order will be confirmed, without sending back the case to be re-stated. (*R.* v. *Rickinghall Superior*, 1 *Nev. & M.* 47.)

It seems, however, that the court above will not be concluded by the finding of sessions, as stated in a special case, where they see that that finding is perfectly contradictory to the facts proved and set out in the case, as constituting the ground of the decision; *e. g.* where sessions find the fact of a coming to settle, and mistakenly refer it to the court, with the facts on which their finding was grounded as a matter of law. (*R.* v. *Woolpit*, 4 *A. & E.* 205; 5 *Nev. & M.* 526, *S. C.*)

So where the sessions have decided on the facts against or without evidence. (*R.* v. *Great Wishford*, 4 *A. & E.* 224, *per Coleridge, J.*; *R.* v. *Threkingham*, 7 *A. & E.* 848.)

In sending up a case, the sessions must not reserve the power of afterwards deciding it themselves. (*Reg.* v. *Wiston*, 1 *G. & D.* 681.)

If the special case be insufficient, the court will send it back to be re-stated, upon which the sessions should proceed and re-hear it as if it were an entire new business; for it is in the nature of a new trial; wherefore they have no right to take any notice of what passed before, and they may receive further evidence, and make a new order on such re-hearing. (*R.* v. *Page*, 2 *Bott.* 743; *Rex* v. *Bloxam*, 1 *Adol. & Ell.* 386; 3 *N. & M.* 385, *S. C.*)

Insufficient case sent back, and proceedings on.

When the case, however, is only sent back to ascertain some particular fact, the proof may be confined to that, and it may be amended by new evidence. (*R.* v. *Hitcham*, *Burr. S. C.* 489; *R.* v. *Bloxam*, 1 *A. & E.* 386.)

Or the case may be sent back to explain some ambiguity of expression, or an omission of an inference, which the justices may supply without hearing witnesses; for the sessions, in order to re-state a case, are not necessarily obliged to hear new evidence. (*R.* v. *Bray*, 2 *Bott.* 743; *Burr. S. C.* 684.)

But the court will not send a case down to the sessions to be re-stated on a mere formal objection, if enough appear to enable them to decide according to the merits of the case, and when the only possible result of sending back the case would be to produce delay and expense. (*R.* v. *Inh. of Middlezoy*, 2 *T. R.* 41.)

Nor on the affidavit of a person that the clerk of the peace did not state his evidence truly. (*R.* v. *Burgh*, 2 *Bott.* 747.)

A. *The Jurisdiction, &c. of the Sessions.*

Nor will a case be sent back if the facts stated warrant the judgment, though the court below has drawn an inference which they do not warrant. (*R.* v. *Rickinghall Superior*, 1 *N. & M.* 47.)

Where necessary, special directions are inserted in the rule, by which the order is sent down commanding the sessions to inquire into and state particular facts. (*R.* v. *Clifton-on-Dunsmore*, *Burr. S. C.* 697.)

A new case may, if defective, be again remitted to sessions for further inquiry. (*R.* v. *Bray*, *Burr. S. C.* 682.)

A re-hearing on the merits was allowed where the respondents had stood on a point of form at the sessions, and got the order of removal quashed there, the opinion of the court being afterwards adverse to them on the point of form. (*R.* v. *Arleedon*, 3 *P. & D.* 95.)

Where an order of justices has been quashed on appeal, subject to a case, and the court of Q. B. directs the case to be re-stated, the sessions have no jurisdiction to hear evidence thereon or to confirm or quash the order without a notice by one of the parties to the other of an intention to proceed at such sessions, which notice may in such a case be given by the respondents: serving a copy of the rule of the court of Q. B. directing the case to be re-stated, will not dispense with such service of a notice. (*Reg.* v. *Barnes*, 2 *G. & D.* 233.)

Where it has been referred to the chairman at sessions on an appeal to state a case, and a case has afterwards on *certiorari* been returned to this court by the clerk of the peace purporting to be signed by the chairman, this court will not send it back to be re-stated, or quash the *certiorari*, on the ground of the chairman having said that he did not recollect signing the case, and upon a suggestion by the attorney for one of the litigating parties in an affidavit, that such case does not agree with the facts proved, and that deponent believes the chairman did not settle the case. (*R.* v. *The Inhabitants of Matlock*, 5 *B. & Ad.* 883.)

Sessions not compellable to state a case.

The sessions cannot in general be compelled to state a special case. Nor will the court permit them to raise a general question, by omitting to state particular circumstances belonging to the case. But if the sessions order a special case to be made, and before it is settled the sessions is inadvertently adjourned, the court of Queen's Bench will grant a *mandamus* to compel them to proceed in the appeal. (*R.* v. *Oulton*, 2 *Bott.* 73; *R.* v. *Francis Hill*, 1 *Bott.* 280; *R.* v. *Justs. of Sussex*, 2 *Bott.* 751; *R.* v. *Pembrokeshire*, 2 *B. & Ad.* 391.)

And where the original order of removal was confirmed by the sessions subject to a case, but the counsel disagreed as to its terms, and the chairman and justices did not settle it when referred to for that purpose, a *mandamus* issued commanding them to enter continuances and hear the appeal; for they had not decided the appeal, their order of confirmation being conditional, and no order at all if no case was returned. (*R.* v. *Suffolk* (*Justices*), 1 *Dowl.* 163.) But where an order of removal was confirmed at sessions subject to a special case, which remained unsettled for more than six months after it was granted, and no *certiorari* had been sued out within that time as required by 13 Geo. II. c. 18, s. 5, the *mandamus* to enter continuances and hear the appeal was refused, for the order had become absolute at the end of six months, as no *certiorari* had been sued out. (*R.* v. *Staffordshire* (*Justices*), 1 *Dow.* 484.)

But they will not grant such a *mandamus*, where it is clear that the proceeding could lead to no result; as where the chairman, in consequence of his own opinion and that of the court upon the facts, refused to sign any statement but one which would have excluded the point of law relied on by the party demanding a case. (*R.* v. *Pembrokeshire*, 2 *B. & Ad.* 391.)

The court will not issue a *mandamus* to a court of quarter sessions, commanding them to grant a case, although, under special circumstances, it may issue such a *mandamus*, commanding the sessions to state a case. (*Ex parte Jarvin* (*Inhabs.*), 9 *Dowl.* 120.)

Where on an appeal against an order of removal, the sessions, without

going into the appeal, quashed the order on the ground that the examinations sent to the appellants did not state the pauper to be chargeable at the time of making the order, but afterwards granted a case to the respondents on the point of construction of 4 & 5 Will. IV. c. 76, but the case was not brought up, the court refused to hear the point discussed on application by the respondents for a *mandamus* to enter continuances and hear the appeal. (*R. v. Suffolk (Justices)*, 6 *A. & E.* 109.)

4. *The Jurisdiction, &c. of the Sessions.*

Where the quarter sessions have dismissed an appeal upon a point of practice, subject to a case, which the applicants for the case have not brought up, the court of Queen's Bench will not at their instance grant a *mandamus* to enter continuances and hear the appeal. (*R. v. Justices of the West Riding; Wormsworth* v. *Doncaster*: 1 *Adol. & Ell.* 606.)

If the justices at sessions are equally divided, and no order be made, nor the sessions adjourned, no order can be made at a subsequent sessions. (*Infra.*)

Where justices divided in opinion.

Special orders of sessions are considered in the nature of special verdicts, which are not to state the evidence of the fact, but the fact itself. (*R. v. Martley, Burr. S. C.* 120; 2 *Bott.* 741.)

Special orders, verdicts, &c.

The court ordered the sessions to inquire into a fact which appeared doubtful on the original order of removal, even though the sessions stated no case for the opinion of the court. (*R. v. Margam*, 1 *T. R.* 775.)

The sessions should state, as a fact (in a settlement case), whether the master dispensed with the service before the end of the year, or whether there were a dissolution of the contract by mutual consent. (*R. v. St. Peter, Norwich*, 8 *T. R.* 477.)

What to be stated in a settlement case.

Special cases are most usually granted in cases of settlement and rating. They may, however, be granted in all cases of orders nd convictions, where the *certiorari* is not taken away by statute. (*The King* v. *Allen*, 15 *East's R.* 333.)

Special cases may be granted on convictions, &c.

But the court of Queen's Bench will take no cognizance of a special case reserved on an indictment at sessions. (*The King* v. *The Inhabitants of Salop*, 13 *East's R.* 95.)

Where one question alone is submitted to the court of Queen's Bench by the sessions, that court will not consider any other questions. (*R. v Guildford*, 2 *Chit.* 284; *R. v. Aire and Calder Navigation*, 2 *T. R.* 666.)

Q. B. will not consider more than the question put.

V. Of the Adjournment of.

It should be premised that the whole session is in law considered as *one day*. All the proceedings have reference to the *first* day of the sessions, and the justices may alter their orders, if they see good cause, at any time before the close of the sessions. (2 *Salk.* 607; 1 *Stra.* 383.)

Adjournment of the sessions.

If the justices at sessions are equally divided, or from any other cause no judgment is given, and no adjournment takes place, no order can be made on an unfinished case at a subsequent sessions. (*Bott.* 713; *Bodmin* v. *Warlyne*, 2 *Bott.* 733.)

Where there is an equal division, an adjournment should be entered by the clerk of the peace that the justices may resume the consideration of the matter at a future sessions. (*Id.*)

The court of quarter sessions cannot be adjourned by the crier without the presence of the justices. (*R. v. Middlesex Justices*, 3 *N. & M.* 110; 6 *C. & P.* 90, *S. C.*)

The adjournment of a sessions must be made by the same number of justices as are necessary to hold it. (*R. v. Westrington*, 2 *Bott.* 733.)

The adjournment ought not to be beyond the time of meeting of the next quarter sessions, as in the case of *R. v. Grince*, T. 4 Geo. I. An indictment was found before the justices for the county of Lincoln, against a constable, for refusing to obey an order of the justices; and the defendant

6. *Fees, Estreats, and Costs.*

was tried, convicted, and had judgment given against him, at a general sessions, held the 3rd day of May (which was after the Easter sessions began), by the adjournment of the Epiphany sessions; but, by the court of Queen's Bench, the judgment was reversed, because the justices cannot continue one general sessions to a day subsequent to the time appointed by the 2 Hen. V. c. 4, for the holding another original sessions. (19 *Vin. Abr.* 358.)

Where the sessions is adjourned, the style of the sessions ought not to run *at such a sessions held by adjournment;* but the original meeting of the sessions ought to be set forth, and that it was continued by them from thence to such further time by adjournment. (*R.* v. *Harrowby, Burr. S. C.* 102; *R.* v. *Heptonstall, Id.* 88; *R.* v. *Fisher,* 2 *Stra.* 865; *see also R.* v. *Walker,* 2 *Sess. Ca.* 21.)

By 1 Vict. c. 4. "The justices for any county, riding, division, or place, within England and Wales, in quarter sessions assembled, and the recorder of any city or borough, at any court of quarter sessions holden in and for the same, when to such justices and recorder respectively shall seem meet, may direct the clerk of the peace to take the necessary steps for causing juries to be summoned to attend any adjourned court of quarter sessions for the dispatch of its business in the same manner as they may now be summoned to attend any general quarter sessions, the juries so summoned to attend adjourned quarter sessions having the same duties and powers as if summoned to attend any general quarter sessions." As to dividing court at adjourned quarter sessions, see 5 & 6 Vict. c. 38, s. 4, *ante,* 955.

See further as to the adjournment of the hearing of appeals, *ante,* "*Appeal,*" Vol. I. p. 172.

VI. Fees, Estreats, and Costs.

Wages of the justices and estreats.

By the 12 Rich. II. c. 10, the justices shall take for their wages 4*s.* the day for the time of their sessions, and their clerk 2*s.*, of the fines and amerciaments arising and coming out of the same sessions, by the hands of the sheriffs (*a*). And the lords of franchise shall be contributory to the said wages, after the rate of their part of fines and amerciaments. (*See* "*Justices,*" Vol. III.)

But by the 14 Rich. II. c. 11, no duke, earl, baron, or baronet, shall take any wages.

And the estreats of the justices shall be doubled, and the one part delivered by them to the sheriff, to levy the money thereof arising, and thereof to pay the justices their wages by the hand of the sheriff, by indenture betwixt them thereof to be made.

Fees in sessions.

The fees in sessions for traversing, trying, or discharging indictments,

(*a*) The sum allowed for justices' wages in the county of Middlesex varied according to the number of justices *present* at each sessions; for the year ending Michaelmas, 1833, the sum then claimed amounted to *four hundred and thirty-five pounds eleven shillings,* upon which the lords commissioners of the treasury thought fit to order the sum of *two hundred pounds* to be paid and no more. In August, 1835, the lords commissioners directed that from and after the then next October general quarter sessions of the peace, no greater allowance should be made on account of justices' wages than that authorized by the acts of the 12 & 14 *Rich.* II. c. 10 & 11, namely, *four shillings* a-day for each justice, according to the number of days he shall actually attend at the sessions, nor in any case exceeding the number of *eight* justices in one day, and *two shillings* per day for their clerk.

The allowances for justices' wages, in all other counties, was *forty-eight pounds per annum,* however much the amount claimed might be, and in future all the other counties in England, as respects justices' wages, are placed on the same footing with the county of Middlesex.

discharging recognizances of the peace and good behaviour, and the like, do vary according to the custom of the country; and, in that case, the custom of the place is to be observed. (*Dalt. c.* 41. *See title "Clerk of the Peace,"* Vol. I.)

6. *Fees, Estreats, and Costs*

By *Holt*, C. J., the court cannot commit for non-payment of fees; for, if there be right, there is remedy; and *indebitatus assumpsit* will lie, if the fee be certain; if uncertain, *quantum meruit*. (*Pollard* v. *Gerrard*, 2 *Ld. Raym.* 703; 12 *Mod.* 608.)

As to the allowances to constables and others, by justices in sessions, see the 18 Geo. III. c. 19, *title "Constable,"* Vol. I.

Constables' allowances, &c.

As to prison fees, *see "Gaol,"* Vol. III.

Prison fees.

As to costs of prosecutions and removals by *certiorari, see "Costs," "Certiorari,"* Vol. I.

And as to costs on appeal, *see "Appeal,"* Vol. I.

VII. Forms.

(1.) Precept to summon the sessions.

County of —— } *J. P. and K. P. esqs., justices of our sovereign lady the Queen, assigned to keep the peace in the county of , aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, committed in the said county, one of us being of the quorum; to the sheriff of the same county, greeting. On the behalf of our said sovereign lady the Queen, we command you that you omit not, by reason of any liberty within your county(a), but that you enter therein, and that you cause to come before us, or other justices, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, on , the day of now next ensuing, at the hour of [ten] in the forenoon of the same day, at , in the said county, twenty-four good and lawful men of the body of the county aforesaid, then and there to inquire, present, do, and perform all and singular such things which, on the behalf of our said sovereign lady the Queen, shall be enjoined them; also, that you make known to all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the county aforesaid, that they be then there to do and fulfil those things which, by reason of their offices, shall be to be done; moreover, that you cause to be proclaimed through the said county, in proper places, the aforesaid sessions of the peace to be held at the day and place aforesaid; and do you be then there to do and execute those things which belong to your office; and have you then there as well the names of the jurors, coroners, keepers of gaols and of houses of correction, high constables, and bailiffs, aforesaid, as also this precept. Given under our seals, at A., in the county aforesaid, the day of , in the year of the reign of*

When the sheriff hath received this precept, which should bear date 15 days before the return, he must direct several warrants to the several bailiffs of hundreds and liberties, containing in them the substance of the said precept.

(2.) The style of the sessions.

County of —— } *The general quarter sessions of the peace holden at , in and for the said county, on the day of , in the year of the reign of our sovereign lady Victoria, of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, before J. P. and K. P., esqs., and others, justices of our said sovereign lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, and of the quorum, and so forth.*

(3.) Condition of

The condition of this recognizance is such, that if the above-bound A. W.

(a) If there be a liberty or other franchise possessing an exclusive jurisdiction, that is to say a jurisdiction in which the justices of the county at large are prohibited from interfering, it will be proper to add in this place, (*except the liberty of , within the same,*) 4 *Chit. C. L.* 176, 1*st. Ed.*

7. Forms.

a recognizance to appear and give evidence at the sessions, in case where the queen is a party.

shall personally appear at the next general quarter sessions of the peace to be holden at , in and for the county of , and then and there give such evidence as he knoweth against , for having feloniously taken and carried away , the property of , and do not depart thence without leave of the said court, then this recognizance to be void.

(4.) Subpœna to give evidence in case where the queen is not a party.

Victoria, &c., to A. W., B. W., and C. W., of . [yeomen], greeting. We command you, and every of you, that all business being laid aside, and all excuses ceasing, you do in your proper persons appear before our justices, assigned to keep our peace in the county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors, in our said county committed, at the sessions of the peace to be holden at , in and for the said county, on , the day of now next ensuing, at the hour of [ten] in the forenoon of the same day, to testify all and singular those things which you, or any of you, shall know, in a certain appeal now depending between the [churchwardens and overseers of the poor of the parish of , appellants, and the churchwardens and overseers of the poor of the parish of , respondents, touching and concerning the removal of A. P. from the said parish of to the said parish of ; or, in case where the Queen is a party, to testify the truth, and give evidence on our behalf against A. O. for assaulting C. D.]; and this you and every of you are in no wise to omit, under the penalty of 10l. for you and every of you. Witness, J. P. and K. P., esqs., two of her majesty's justices of the peace for the said county, the day of .

Where the queen is.

Note.—There may be four witnesses put in one *subpœna*.

(5.) A subpœna ticket for a witness.

Mr. A. W. By virtue of a writ of subpœna *to you and others directed, and herewith shown unto you, you are required personally to be and appear at the next general quarter sessions of the peace to be holden at , in and for the county of , to testify the truth according to your knowledge in a certain appeal now depending between [the churchwardens and overseers of the poor of the parish of , appellants, and the churchwardens and overseers of the poor of the parish of , respondents, concerning the removal of A. P. from the said parish of to the said parish of , on the part of the said appellants]; and herein you are not to fail, on pain of 10l. Dated the day of , in the year*

(6.) Judgment of affirmance, &c. at sessions.

See a form, *Chit. General Practice*, part 3, p. 216, 217.

Other matters relating to the very extensive office of a magistrate may be found under their proper heads, in almost every title of this work.

Sessions, Petty and Special.

Petit session, when necessary.

A PETTY or petit session is a meeting of two or more justices of the peace, holden of their own mere motion, for the execution of some power vested in them by law. There are some occasions on which, though a single magistrate may proceed, it is advisable and usual to procure the attendance of two or more. With respect to the cases in which one magistrate may act, but in which he should, in his discretion, seek the assistance of another, it is obviously impossible to suggest any general rules. A magistrate will probably think it advisable to adopt the latter course, in cases which affect large pecuniary interests, which involve questions arising on statutes of difficult interpretation, and in all cases where any doubt may reasonably be expected, and where his decision would be final. Cases will also sometimes occur, in which, though not in themselves difficult, local circumstances may render the concurrence of two or more magistrates advisable, in order that justice may not only be fully and

When expedient.

fairly, but satisfactorily administered. (*Talf. Dick. Sess. p.* 11.) See further as to when there must be two or more justices, *ante*, "*Justices*," Vol. III.

Special session, what.

A special session is a meeting of justices, holden on a special occasion, for the execution of some particular branch of their authority, convened by reasonable notice to the other magistrates of the division. (*Per Bayley, J., R.* v. *Justs. of Worcestershire*, 2 *B. & Ald.* 233; 2 *Haw. c.* 8, *s.* 18.)

Differs from petty session.

It differs from a petty session, with which it has been sometimes confounded, in this important respect, that an opportunity must be afforded to the magistrates of the division in general to attend and participate in the proceedings, whereas the petty session may be holden by any two justices, on their mere private agreement, to transact such business as they are authorized to perform. (*Talf. Dick. Sess.* 14.)

Time of holding.

By certain statutes, special sessions are required to be holden at particular periods. For instance, specific times are mentioned in the 48 Eliz. c. 2, and 54 Geo. III. c. 91, for appointing overseers of the poor; in 5 & 6 Will. IV. c. 50, for appointing or dismissing surveyors of the highways; in 37 Geo. III. c. 143, 4 & 5 Will. IV. c. 49, 5 & 6 Will. IV. c. 63, for appointing inspectors of weights and measures; in 9 Geo. IV. c. 61, for licensing ale-houses. See also 2 & 3 Vict. c. 35, as to meetings of special sessions for the purpose of granting licenses to deal in game. (*See titles* "*Highways in General*," Vol. III.; "*Weights and Measures*," Vol. VI. "*Alehouses*," Vol. I.; and "*Game*," Vol. III.) The sessions, therefore, must in these cases be holden at the times named. There are others for which no particular time is or can be prescribed, and which may be convened whenever the occasion shall arise; as for diverting or stopping up highways, proceeding under the General Inclosure Act, and erecting a house of industry for the hearing of a complaint by guardians of the poor against overseers for not paying their contributions, &c. made, 2 & 3 Vict. c. 84, s. 1.

It is remarkable, that by the Highway Act, 5 & 6 Will. IV. c. 50, which requires various proceedings to be done by two justices at the least assembled at a special sessions, the necessity for giving written notice of the time, places and object of the meeting to every justice of the division, is expressly dispensed with, although such notice is in fact the only feature wherein the special differs from the petty sessions.

Manner of holding.

Where the manner of holding a special session is prescribed by the statute which directs it to be holden, the precise requisitions of the statute must, of course, be obeyed. Where no such direction is to be found, as in the great majority of instances, the special session may be convened at the instance of the *custos rotulorum* of the county, of the clerk of the peace or his deputy, or of two justices. The party or parties convening the session issue a precept to the chief constable, who thereupon issues precepts to the petty constables, and gives notice to all the magistrates usually acting within the district for which the session is convened. The precepts must express distinctly the purpose for which the session is to be holden; and of this purpose distinct notice must be given to the magistrates, more especially when the session is not one of those directed by statute to be periodically holden for specific purposes. (*Talf. Dick. Sess.* 16.)

How convened.

The forms of these precepts vary, of course, with the occasion; a specimen of one, and of the high constable's precept thereupon to the parish constables, will be found in *Talf. Dick. Sess. p.* 16, *n.* (1), *5th ed.*

Notice given to magistrates.

We have already seen that, to constitute a good special session, reasonable notice should be given to all the magistrates of the division; and, therefore, in the case of *The King* v. *Justs. of Worcestershire*, 2 *B. & Ald.* 228, before mentioned, where a precept for holding a special session on the 15th of September, for diverting a way, was issued on the 12th, and the notices given on the 14th, the court of King's Bench held that the session was not properly convened, and the order invalid.

Notice given by high constable.

When the division within which the magistrates act is a *hundred*, the notices of holding a special sessions must be given by the high constable

of the hundred. When they are justices of a corporation, the notices must be served by authority of the officer of the corporation analogous to the high constable. In the case of *R.* v. *Justs. of Surrey*, the notice was served on the several magistrates of the division by the clerk of the magistrates, and not by the high constable; and the special session convened thereon was held bad. (*5 B. & C.* 241; *7 D. & R.* 857; *4 D. & R. M. C.* 8, *S. C.*)

Need not be actually served by him.

But the statute only requires that the notice shall be *given* by the high constable or other proper officer; it is not necessary that it should be actually *served* by him; and, therefore, in the case of *R.* v. *Justs. of Suffolk*, where notice, having been signed by the chief constable, was served by a person acting under his authority, it was held good, as though he had personally served it. (*R.* v. *Justs. of Suffolk*, 6 *B. & C.* 110; 9 *D. & R.* 111, *S. C.*)

Cannot be holden by different sets of magistrates for same purpose.

A special session cannot be holden by different sets of magistrates for the same purpose. And, therefore, where two sets of magistrates have concurrent jurisdictions, and one appoints a meeting to grant ale licences, their jurisdiction attaches so as to exclude the others appointing a subsequent meeting; but they may all meet together on the first day. But if, after such appointment, the other set of magistrates meet on a subsequent day, and grant other licences, their proceeding is illegal, and the subject of an indictment, even without evidence of corrupt motive. (*R.* v. *T. Sainsbury, Esq., and another*, 4 *T. R.* 451.)

Place of holding.

The place of holding a special session is in the discretion of those who have power to convene it, so that it is within their jurisdiction; but it must be distinctly specified in the precepts and notices. (*Dalt.* 185; *ante*, 987.)

9 Geo. IV. c. 43.

The exact division and limits of some counties being very uncertain, and the consequent risk of holding of special and petty sessions in improper places, engaged the attention of the legislature, and on the 15th of July, 1828, "An Act for the better Regulation of Divisions in the several Counties of England and Wales," (9 Geo. IV. c. 43,) was passed, by which it is enacted, "That at any time or times after the Michaelmas quarter sessions next following the passing of this act, it shall be lawful for any two or more justices of the peace for any county, riding, or division in England or Wales, having a separate commission of the peace, to transmit to the clerk of the peace a statement in writing, signed by such justices of the parishes, tithings, townships, and places within the same, which, in the opinion of such justices, would form together a convenient and a proper division within and for which special sessions should thenceforward be held; or of any parishes, tithings, townships, or places, which, in the opinion of such justices, ought to be annexed, for the same purposes, to any other division in the said county than those or that of which at the time of making such statement they form part; and that every such statement shall, among other things, set forth within what existing divisions or division, limits or limit, the several parishes, tithings, townships and places enumerated in the same, are situated or deemed to be; and also whether one or more, and what existing divisions or limits will be altered by such proposed new divisions, or by the change of any place or places from one division to another; and also the names of such justices of the peace as at the date of such statement are usually resident or acting as such within the boundaries of such proposed new division."

Justices to forward to clerk of peace a statement of the townships, places, &c. that would form a proper division for which special sessions should be held

Statement to be laid before the justices at next quarter sessions, who are to adopt or reject same (*a*).

Sect. 2. "At the quarter sessions next following the receipt of every such statement, setting forth such particulars as are above enumerated, and not otherwise, the clerk of the peace shall and he is hereby required

(*a*) Where an order for altering the arrangement of parishes, townships, &c. of any county, for the convenience of holding special sessions, has been made under sects. 2, 4, there is no appeal against it. Sects. 8 and 9 apply to orders made under the authority of sect. 7 only. (*R.* v. *Derbyshire Justices*, 1 *Dowl.* 386.)

to lay the same before such justices of the peace in such sessions assembled; and the justices of the peace for such county, riding, or division, having such separate commission of the peace, shall and they are hereby required (except in the cases hereinafter provided for) to proceed at the quarter sessions next following the laying of such statement before them as aforesaid, to the consideration thereof, and at their discretion to adopt the same wholly or in part, or to reject the same altogether, or to adjourn their determination thereupon to the next or any succeeding quarter sessions." 9 Geo. IV. c. 43.

Sect. 3. "Immediately after the quarter sessions at which such statement shall have been first laid before the justices of the peace, the clerk of the peace shall cause to be published a copy of such statement in three successive numbers of one or more weekly newspapers usually published or circulated within the same county, riding, or division, and in which the advertisements of county business are usually inserted; and at the foot of such copy shall also cause notice to be given that such statement has been laid before such justices in pursuance of the directions of this act, and that the same will be taken into consideration by the court at the then next ensuing quarter sessions." Clerk of peace to advertise statement and other particulars in newspapers.

Sect. 4. "When and so often as the justices of the peace of any such county, riding, or division, having a separate commission of the peace, shall adopt wholly or in part any such statement so laid before them, and shall determine to change any parish, tithing, township, or place, from one division to another, or to constitute any new division, within which special sessions shall thenceforward be holden, the said justices of the peace shall thereupon make an order for such alteration, or for the constituting and defining such new division, and in such last-mentioned order shall particularly enumerate the several parishes, tithings, townships, and places to be comprised within such new division, and shall also specify the division or divisions within which respectively any parishes, tithings, townships, and places, disannexed by such order from any former division, and not forming part of such new division, shall thenceforward be taken to be, and also shall affix to such new division the name of some principal and convenient parish, township, or place within the same, and also shall, in either of such orders, as the case may be, particularly set down the day from which such order shall take effect; and the clerk of the peace for such county, riding, or division, shall forthwith publish a copy of such order in three successive numbers of one or more such weekly newspapers as aforesaid, and shall transmit a copy of such order to every high constable within the limits of such new or altered division or divisions." If justices approve, an order to be made for constituting a new division, and clerk of peace to publish same (a)

Sect. 5. "Nothing in this act shall be taken to authorize, and that it shall not be lawful for any justices in any court of quarter sessions to make any order constituting such new division, unless upon due proof before them made in open court upon oath, that for two years next before the making of such proof there have been, [as to this see now 6 & 7 Will. IV. c. 12, s. 2, *post*, 992,] and at the time of making the same there are, at the least, five justices of the peace residing in or usually acting within the boundary line proposed to be the limits of any such new division." No new division to be constituted unless five justices at least shall be proved to be resident therein.

Sect. 6. "From and after the day so specified in such order, for the term of twenty-one years [see now 6 & 7 Will. IV. c. 12, s. 1,] and until further order of sessions after the expiration of that time, and subject to no alteration or revision during such term, except as hereinafter provided, all matters and things which by law are now or hereafter may be required to be, or which now are, usually transacted or determined within the division within which the same shall have arisen, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one, two, or more justices of the peace dwelling or usually acting within the same, shall be transacted and determined, so far as the same New divisions to be deemed lawful divisions for holding special or petty sessions, or other meetings of justices.

(a) See note (a) preceding page.

9 Geo. IV. c. 43.

matters and things arise within or concern the inhabitants of such new or altered division, or any of them, or the persons exercising their trade or calling therein, within the boundaries of such new or altered division; and such new or altered division shall thenceforward be, and be reputed and taken to be, for all purposes, and in the construction of all statutes now in force or hereafter to be made, and containing no special provision to the contrary, a lawful division for the holding of special sessions; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee-houses, and victualling-houses, and other persons, shall and they are hereby thenceforward required to give their attendance to and upon such justices of the peace at any time assembled in such special sessions, within the same division, as fully and effectually as by law they had been bound to do within any division reputed or taken before the passing of this act to be a lawful and accustomed division of justices for the purposes aforesaid."

Justices at sessions to cause inquiry into extent of divisions, and alter same, and affix names thereto.

Sect. 7. "At the quarter sessions next after the laying of any such statement before the justices in such sessions assembled, it shall and may be lawful for such justices, if they shall deem it expedient and proper, not to proceed to the single consideration of such statement, but, instead thereof, to cause to be made an inquiry and examination into the boundary lines, extent, and other local circumstances, of all the existing and accustomed divisions for the holding of special sessions within the commission of such justices; and at such or any succeeding quarter sessions, to which the conclusion of such inquiry and examination may from time to time be adjourned, by order of sessions, to regulate, alter, new-model, and subdivide all or any of such divisions, in such manner as shall appear to them proper and convenient, particularly specifying in such order the names of all such divisions, whether newly constituted, altered, or unaltered, the several parishes, tithings, townships, and places, to be comprised in each, and affixing or continuing to each, the name of some principal and convenient parish, township, or place within the same."

Clerk of peace to publish a copy of such order.

Sect. 8. "That the clerk of the peace for any county, riding, or division, in which such order shall have been made as last aforesaid, shall forthwith publish a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also forthwith transmit, by the post, a copy of the same to the churchwardens and overseers of the poor of each parish within the said county, riding, or division, to be by them affixed on the principal door of the church of such parish; and at the foot of every such copy so published or transmitted shall add a notice specifying at what time such order will be enrolled as hereinafter provided, and at what time and in what manner any person or persons, or body corporate, aggrieved by such order, may petition against the same, or any part thereof, as hereinafter provided."

Order to specify time when it shall be enrolled. Parties allowed to petition against such order (a).

Sect. 9. "In every such order, some time, not earlier than the fourth quarter sessions next after the making thereof, shall be provisionally specified, on which the same shall be enrolled as hereinafter provided, subject to such alteration as may thereafter be made either in the particulars of the said order, or in the time of its enrolment; and that at any court of quarter sessions preceding such time, it shall and may be lawful for any one or more person or persons, or body corporate, jointly or severally, to present a petition in writing to such court, against all or any part of such order, and to produce witnesses in support of such petition: and the justices at such court assembled shall and they are hereby required to hear and determine, in a summary way, the merits of such petition, and to amend such order so far as may, upon such hearing, appear proper and convenient: Provided always, that no such petition shall be received or examined into, unless after due proof that a notice in writing, specifying

(a) Sects. 8 and 9 apply to orders made under sect. 7 only. (*R.* v. *Derbyshire Justices*, 1 *Dowl.* 386.)

the grounds thereof, which upon the hearing shall alone be inquired into, hath been served, ten clear days before the commencement of such sessions, upon one of the overseers of the poor, or the tithingman or constable, or two substantial housekeepers of the parish, tithing, township, or place respectively, as the case may be, wherein such petitioner or petitioners shall be resident at the time of presenting such petition, and also lodged, twenty clear days before such commencement, at the office of the clerk of the peace, who shall and he is hereby required forthwith to transmit a copy thereof to each of the justices usually acting within or for the district or places or place named in such notice." 9 Geo. IV. c. 43.

Sect. 10. "So soon as all such petitions against such order shall have been determined, and such amendments made therein as shall have appeared necessary or proper, the justices at such quarter sessions shall cause to be inserted therein some day not earlier than one month after such sessions from which the same shall take effect, and shall cause the same order to be enrolled, and the same shall remain an order of sessions, controlling any order or orders of sessions heretofore made for the separate constitution of any new divisions, or the partial alteration of any accustomed divisions, under the former provisions of this act, and not subject itself to revocation or alteration of any kind for the space of ten years thence next ensuing; and during such ten years no such statement shall be received or proceedings had thereon as above mentioned, but during all that time, and until further order of sessions after the expiration of that time, the several divisions, as limited, modelled, or constituted in and by such order, shall be and be taken to be, for all the purposes in this act mentioned, the lawful divisions of such county, riding, or division, having such separate commission of the peace, for the meetings of justices in special sessions, under any statute now in force, or hereafter to be made, and containing no special provision to the contrary; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee-houses, and victualling-houses, and other persons, shall and they are hereby required thenceforward, during the time last above limited, to give their attendance to and upon the justices of the peace at any time assembled in such special sessions, within the same divisions respectively, as fully and effectually as by law they have been bound to do within any division reputed and taken before the passing of this act to be a lawful and accustomed division for the meetings of justices for any of the purposes aforesaid." [See this altered by the 6 Will. IV. c. 12, *infra*.] Order to be enrolled as soon as petitions against the same have been determined, and shall not be subject to alteration for ten years.

Sect. 11. "Immediately after the enrolment of such order, the clerk of the peace shall and he is hereby required to cause to be published a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also transmit one copy thereof to each justice of the peace dwelling within or usually acting within and for such county, riding, or division, having such separate commission of the peace." Clerk of peace to publish copy of enrolment.

Sect. 12. "No order to be made, nor any proceeding to be had or taken, in pursuance of this act, shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatever, into any of his majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding." Proceedings not to be quashed for want of form.

Sect. 13. "Nothing in this act contained shall extend or be construed or taken to extend to the county of Middlesex in England, or to Scotland or Ireland." Not to extend to Middlesex, &c.

As to the duties of constables upon division of a district under the above act, *see* 10 Geo. IV. c. 46, *and title "Constable,"* Vol. I.

By the 6 & 7 Will IV. c. 12, intituled "An Act for amending an Act of the Ninth Year of the Reign of his late Majesty King George the Fourth, intituled 'An Act for the better Regulation of Divisions in the several Counties of England and Wales,'" [20th May, 1836,] reciting, "Whereas by an act passed in the ninth year of his late majesty king 6 Will. IV. c. 12.

6 Will. IV. c. 12. 9 Geo. IV. c. 43. George the Fourth, intituled 'An Act for the better Regulation of Divisions in the several Counties of England and Wales,' it is amongst other things enacted, that such divisions, when severally constituted in the manner directed by the said act, shall be subject to no alteration or revision for the several terms of twenty-one years and ten years respectively, and until further order of sessions after the expiration of such terms of twenty-one years and ten years respectively: and whereas it may be expedient that such divisions should have the same limits as unions of parishes formed under the act of the fourth and fifth years of his present majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales;' and for this and other reasons it may be expedient to alter such divisions within shorter periods of time than are now fixed by the herein recited act;" it is enacted, "That it shall be lawful for the justices of the peace for any county, riding, or division having a separate commission of the peace, in any court of quarter sessions, to alter and revise such divisions in the manner and according to the forms required by the said herein recited act, on the expiration of three years from the constituting thereof, any thing in such act contained to the contrary notwithstanding."

4 & 5 Will. IV. c. 76.

Justices at quarter sessions may alter divisions after three years from the constituting thereof.

New divisions may be constituted if five justices are resident or acting therein.

Sect. 2. "It shall be lawful for the justices as aforesaid at such quarter sessions to make any order constituting any new division, upon due proof before them made in open court on oath, that at the time of making the same there are at the least five justices of the peace residing or usually acting within the boundary line proposed to be the limit of any such new division, but not otherwise."

Forms, &c. to be similar to those in 9 Geo. IV. c. 43.

Sect. 3. "All matters and things by the said herein recited act required to be done by and with regard to the clerk of the peace, shall be done by and with regard to that officer with respect to the new divisions to be formed by virtue of this act."

Reservation of right of appeal.

Sect. 4. "Provided, that every such order shall be made subject to such power of petitioning against the same as is given by the said herein recited act with respect to any order made by virtue thereof."

Proceedings not to be quashed for want of form.

Sect. 5. "No order to be made nor any proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or any other writ or process whatever, into any of his majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding."

Not to extend to Middlesex, Scotland, or Ireland.

Sect. 6. "Nothing in this act contained shall extend or be construed or taken to extend to the county of Middlesex in England, or to Scotland or Ireland."

The reader who wishes further information as to the ordinary occasions of holding these sessions, and the statutes under which they are summoned, is referred to the different subjects, as arranged in titles through this work. The 9 Geo. IV. c. 61, relating to the licensing and government of alehouses, &c., is a very important one, so far as regards the directions contained therein for the holding an annual special session, and other special sessions auxiliary thereto, for the accomplishment of its purposes. It will be found under *title* "*Alehouse*," Vol. I.

Clerk to justices.

As to the office of clerk to the justices in petty sessions, *see ante*, 949.

Mandamus to special sessions.

If certain magistrates, attending at special sessions, do not take part in a decision of the sessions, they ought not to be brought before the court of Queen's Bench, on an application for a *mandamus* in respect of that decision. *Reg.* v. *Wilts* (*Justices*), 8 *Dowl. P. C.* 717; 4 *Jur.* 460—*B. C.*

The court of Queen's Bench will not grant a *mandamus* to the special sessions, after they have once adjudicated and passed the accounts of the surveyors of the highways, under 5 & 6 Will. IV. c. 50, s. 44, to require them to re-examine such accounts, although it appears that improper items have been passed, and the justices who passed them admit they did not investigate the case fully, believing that an appeal lay from them to the quarter sessions. *Reg.* v. *West Riding of Yorkshire* (*Justices*), 1 *Gale & D.* 198.

Sewers.

Statutes as to.

By the 23 Hen. VIII. c. 5, commissions of sewers shall be issued in all parts of the realm, where need shall require.

And by the 13 Eliz. c. 9, for one year after the expiration of a commission of sewers, the justices of the peace, or six of them (two of them being of the *quorum*), may execute the powers of the said commission, unless a new commission shall be issued in the meantime.

But as the power and authority of these commissioners of sewers is not general enough to fall in with the design of this book, those whom it may particularly concern are referred to the statutes at large which treat of this title; namely,

23 Hen. VIII. c. 5.	7 Ann. c. 10, and more particularly
25 Hen. VIII. c. 10.	the recent acts of 3 & 4 Will. IV.
3 & 4 Edw. VI. c. 8.	c. 22, and 4 & 5 Vict. c. 45.

Beside which general acts, there are others which concern the cities of London and Westminster only, and other places within the bills of mortality; to wit,

3 Jac. c. 14.	2 Will. III. sess. 2, c. 8.
19 Car. II. c. 3, s. 20.	8 & 9 Will. III. c. 37.
22 & 23 Car. II. c. 17.	47 Geo. III. c. 7.

Costs of distress for rates.

The 7 & 8 Geo. IV. c. 17, extends the provisions of the 57 Geo. III. c. 93, (an act limiting the charges of brokers on distraining for rents not exceeding 20*l.*,) to distresses for sewer rates, &c. not exceeding 20*l.* (*See title* "*Church*," Vol. I. p. 651.)

In indictments property may be laid in commissioners.

The 7 Geo. IV. c. 64, s. 18, contains a provision as to describing in an indictment or information property under commissioners of sewers. (*See* "*Indictment*," Vol. III.)

Constables to obey orders of commissioners.

By 3 & 4 Will. IV. c. 22, s. 52, "for the better carrying into execution the powers and authorities of the said commissioners of sewers, be it further enacted, That all and every chief and petty constables, headboroughs, and tithingmen, or by whatsoever other name or names such chief or petty constables may be called or known, and other peace officers, of or within the respective hundreds, parishes, townships, liberties, districts, or places within the jurisdiction of the said respective courts, shall and they are hereby authorized and required to obey and execute all and every the orders, warrants, precepts, or other process which may be to them directed by the said commissioners; which said commissioners respectively are hereby authorized to direct such their orders, warrants, precepts, or other process to such chief or petty constables, headboroughs, tithingmen, and other peace officers accordingly."

Jurisdiction of commissioners.

Jurisdiction of Commissioners.]—They have jurisdiction over a sewer communicating with a navigable stream, or with the sea above the point where the tide ebbs and flows, if it be useful for navigation, and if the place over which the jurisdiction is, is likely to be benefited by it. (*Dore* v. *Gray*, 2 *T. R.* 358.)

If a sea-bank, or wall, which the owners of particular lands are bound to repair, be destroyed by tempest, without any default in such owners, the commissioners of sewers may order a new one (in a different form, if necessary,) to be erected at the expense of the whole level. (*R.* v. *Commissioners of Sewers for Western Division of County of Somerset*, 8 *T. R.* 312.)

The commission of sewers under the statute of Hen. VIII. extends only to navigable streams, unless within two miles of London. (*Yeaw* v. *Holland*, 2 *Bla. Rep.* 717.)

The 23 Hen. VIII. c. 5, s. 17, having directed that "laws, acts, decrees, and ordinances," made by commissioners of sewers, shall stand good, and be put in execution so long time as their commission endureth,

Jurisdiction of commissioners.

and no longer, except "the said laws and ordinances" be engrossed on parchment, and certified under the seals of the commissioners into chancery, and have the royal assent; and the 13 Eliz. c. 9, having directed all commissions of sewers to continue in force for ten years, unless sooner determined by *supersedeas*, or any new commission, and that all "laws, ordinances, and constitutions," made by force of such commission, being written on parchment, indented, and under seals, &c., shall, without such certificate or royal assent, continue in force, notwithstanding the determination of the commission by *supersedeas*, until repealed or altered by new commissioners; and that all such "laws, ordinances, and constitutions," written in parchment, indented, and sealed, &c., shall, without certificate or royal assent, continue in force for one year after the expiration of such commission, by lapse of ten years from its *teste*:—Held, 1st, that the laws, acts, decrees, and ordinances, mentioned in the statute of Hen. VIII., mean the same as the laws, ordinances, and constitutions, mentioned in that of Elizabeth; and, 2ndly, that a decree made by commissioners, under a former commission, which had expired by a lapse of ten years, directing a sea-wall to be refounded, which had been destroyed by a violent tempest and inundation, and the sums necessary for its construction to be advanced by those who were before bound to sustain it *ratione tenuræ* (and who did advance the money accordingly), and that a rate should be made on the level for their reimbursement, (although such decree had been written in parchment, indented, and sealed, which this was not,) could not be enforced by commissioners under a new commission issued more than a year after the expiration of the former commission, as to so much of it as remained unexecuted, though good to the extent to which it had been executed; and therefore this court refused a *mandamus* to the new commissioners, to direct a rate to be levied on the level for the reimbursement, directed by the decree. (*R.* v. *Somerset Commissioners of Sewers*, 9 *East*, 109; 3 *Smith*, 105, *S. C.*)

The commissioners of sewers cannot assess a person in respect of drains which communicate with other drains that fall into the great sewer, if the level of his drains be so much above the sewer that the stopping of the sewer could not possibly throw back the water so as to injure his premises, and if he be not, and it does not appear that he is likely to be, benefited by the works done upon the sewer. (*Masters* v. *Scroggs*, 3 *M. & Sel.* 447.)

Under the Statutes of Sewers, it is not alone sufficient, in order to justify an assessment to the sewers rate, that the property should derive benefit from the drainage, but it is also necessary that there should be an occupier of the property assessed. (*Neave* v. *Wrather*, 12 *Law J., N. S.*, 32, *Q. B.*)

By act of parliament, empowering certain persons to make a floating harbour at Bristol, it was enacted, that it should and might be lawful for the directors of the Bristol Dock Company, and they were thereby authorized and required, to make a common sewer in a certain direction, therein specified, and also to alter or reconstruct all or any of the sewers of the said city, at the mouths thereof, so and in such manner that the sewers might be discharged considerably under the surface of the water in the floating harbour; and also to make such other alterations and amendments in the sewers of the said city as might or should be necessary, in consequence of the floating of the said harbour. The directors altered several of the sewers, so as to discharge them considerably under the surface of the water in the floating harbour; but the sewage there discharged was so offensive, as to be a nuisance to the neighbourhood:—Held, that under the latter part of the clause set forth, the directors were authorized and required to make a new sewer, if necessary, to remove the nuisance. (*R.* v. *Bristol Dock Company*, 6 *B. & C.* 181; 9 *D. & R.* 309, *S. C.*)

Where A. was fined by commissioners of sewers for refusing to be re-sworn by a standing jury, the court discharged the fine, it being admitted

that it was not usual to re-swear the jury except upon the issuing of a new commission. (*Exparte Taylor*, 3 *Y. & J.* 91.)

Jurisdiction of commissioners.

The court will not, upon an application to discharge an amerciament, enter into a disputed question as to the validity of the court of sewers. (*Id.*)

The court refused to exercise jurisdiction against commissioners of sewers, to restrain their removing a float, or tumbling-bay, upon a river, such removal being stated to be irreparable mischief. (*Kerrison* v. *Sparrow*, *Coop. C. C.* 305.)

A local act provided that no ditch, &c. should be arched over, &c. without the consent of the trustees under the act, under a penalty of 50*l.*: —Held, that a surveyor, who after a sewer had been commenced, directed it to be continued (without the consent of the trustees), had incurred the penalty. (*Woodward* v. *Cotton*, 1 *C. M. & R.* 44.)

A jury impanelled to inquire and present at a court of commissioners of sewers, presented that A. was benefited by the sewers, and he received a summons to show cause why he should not pay; he neglected to traverse the presentment, and a distress was levied for the amount of the rate:—Held, that these facts were a justification in an action of trespass for taking the distress, as the presentment, if duly made and not traversed, justified the commissioners in issuing the warrant of distress. (*Warren* v. *Dix*, 3 *C. & P.* 71, *n.*)

A local act of parliament, enacting, that for the better and more effectual execution of the act, all the lands, &c. within a certain district (previously within the jurisdiction of the general commissioners of sewers), and works, drains, sewers, &c. thereof, should be subject only to the control, &c. and jurisdiction, of local commissions thereby appointed, and not to the control, direction, survey, or order, of any commissioners of sewers, does not discharge the inhabitants of the district from their liability to serve on juries at the sessions of sewers, without an express provision; nor will the court of Exchequer discharge the estreats of fines imposed by the sessions, and levied on such inhabitants, for refusing to attend when summoned; and the mode of proceeding by which the question was brought under the consideration of the court was by a rule to show cause why the estreats should not be discharged, the commissioners of sewers having refused to join in framing an issue to enable the parties to try the question at law. (*Exparte Owst*, 9 *Price* 117.)

As to continuing under a new commission proceedings commenced under an old one, *see Saunders* v. *Taylor*, 9 *B. & Cres.* 43.

A local drainage act directed, that the commissioners should be elected by the proprietors of the lands within the parish —*Quære*, whether, by the term "proprietors," was meant those who had the actual control of the lands, or the strict owners in fee. (*Reg.* v. *Kelk*, 4 *Per. & D.* 185.)

An order of commissioners is void, unless it is founded on a presentment, showing the existence of some public let, impediment, or annoyance. (*Reg.* v. *Matthias*, 2 *Jur.* 13, *Q. B.*)

It was thought, before 3 & 4 Will. IV. c. 22, that the commissioners of sewers could not maintain an action of trespass against the commissioners of a harbour, for breaking down a wall or dam erected by the former as such commissioners across a navigable river; as the authority to be exercised by them, on the behalf of the public, did not vest in them such a property or possessory interest as would enable them to maintain such action. (*Newcastle, Duke*, v. *Clark*, 2 *Moore*, 666; 8 *Taun.* 602, *S. C.*)

The court of Queen's Bench refused a *mandamus* to the conservators of the Bedford Level against landowners to enforce the repairs of banks, &c., inasmuch as stat. 15 Car. II. c. 17, s. 5, gave the conservators the authority of commissioners of sewers, and therefore they had a sufficient remedy in their own hands. (*Reg.* v. *Gamble*, 11 *Ad. & E.* 69; 3 *P. & D.* 122, *S. C.*)

Where commissioners of sewers under an act of parliament are proceeding to pave and make sewers to the injury of property in a case not

within the act, equity, unless expressly excluded, has jurisdiction to interfere, although by the act jurisdiction is given to the justices at sessions, whose judgment is not to be removed by *certiorari* or otherwise into any of her majesty's courts of record at Westminster or elsewhere. (*Birley* v. *Chorlton-upon-Medlock*, 3 *Beav.* 499.)

Rates.

Rates.]—Sewer rates may be made to reimburse the charges of making such sewers. (*Case of the Level of Hull*, 2 *Str.* 1127.)

Commissioners of sewers may make a rate to defray the expenses of works already done. In order to justify such a rate, it is not necessary that there should have been a previous presentment by a jury of those works.

It is no valid objection to such a rate, that it is made to defray the previous law expenses of the commission *bonâ fide* incurred by the commissioners in the discharge of their duty.

Nor that the rate is in the alternative, to defray the expenses of works done *or to be done*, for the word *or* must be read *and*. (*R.* v. *Commissioners of Sewers for the Tower Hamlets*, 1 *B. & Adol.* 322.)

Under the statutes of sewers, every person whose property derives benefit from the works of the commissioners is liable to be rated, although the benefit be not immediate.

Thus, where a case stated that the eastern wing of Somerset House was drained by the Board of Works, and had no communication with the common sewer running under the body of Somerset House, and being under the jurisdiction of the commissioners, and that the buildings derived no benefit from the sewer, except the general advantage of being accessible, and of the approaches and neighbouring public ways being properly drained and cleansed:—It was held, that the occupiers of the eastern wing were rateable for the common sewer. (*Soady* v. *Wilson*, 4 *Nev. & M.* 777; 3 *Ad. & Ell.* 248, *S. C.*)

It seems that in an action of trespass against the commissioners for levying a rate, if it appeared that they had jurisdiction, the court would not inquire whether the rate was proportioned to the benefit received from the sewage by the party rated.

Under the Sewers Act, 52 Geo. III. c. 48, (local and personal, public,) s. 7, the party rated to the poor as the occupier of the premises is to be considered as the occupier for the purpose of assessment to the sewers rate, although in point of fact the occupancy is questioned. (*Soady* v. *Wilson*, 4 *Nev. & M.* 777; 3 *Ad. & Ell.* 248.)

Under the statute of sewers there must be an occupier of the property deriving benefit from the works of the commissioners, in order to render it liable to be assessed. (*Tracey* v. *Taylor*, 3 *Gale & D.* 14; 12 *Law J., N. S.*, 26, *S. C.*)

Where a case stated that the bridewell or house of correction for the city and liberty of Westminster is a prison of our lady the Queen, and is vested in the justices of the peace for the said city and liberty; that the part of the bridewell in question was merely used for the purpose of keeping prisoners therein, and that no persons resided therein except such prisoners, and the servants whose duty it was to guard and attend to the said prisoners:—It was held, first, that an assessment or rate could not be made in respect of the said part of the bridewell upon the governor of the bridewell, who resided in the governor's house, which was separately rated to the sewers rate; secondly, that, there being no other occupiers of the said part except the prisoners, it was not liable to be assessed to the sewers rate. (*Ib.*)

Where a district, under one commission of sewers, is divided into several levels which are separately drained, and no one level derives benefit from the sewers in the others, the commissioners ought to make a separate rate upon each level. (*R.* v. *Commissioners for Tower Hamlets*, 4 *Man. & Ry.* 365; 9 *B. & C.* 517.)

A decree by the commissioners of sewers is not conclusive against the party assessed for the payment of a rate, and who resides within the dis-

trict over which they have jurisdiction; but such party may prove, in an action of trespass brought by him against one of the collectors of the rates, for taking his goods to satisfy such rate, that he derived no profit from the sewer in respect of which the assessment was made; and such evidence having been rejected at *Nisi Prius*, the court of Common Pleas granted a new trial. (*Stafford* v. *Hamston*, 5 *Moore*, 608; 2 *B. & B.* 691, *S. C.*)

Rates.

A tenement in the Queen's dock-yard, deriving benefit from public sewers, and occupied by an officer of government who pays no rent, is still liable to be rated to the sewers. (*Netherton* v. *Ward*, 3 *B. & Ald.* 21.)

A sewer rate assessed in gross on a township at large is bad. (*Emmerson* v. *Saltmarsh*, 7 *A. & E* 266; 2 *N. & P.* 446, *S. C.*)

The rate must be assessed on individuals. (*Ib.*)

But an amercement on a township generally, and a distress on one of the parties liable, by commissioners of sewers, for neglecting to repair, is good.—*Quære*, whether such distress could be sold independently of 3 & 4 Will. IV. c. 22. (*Ramsey* v. *Nornabell*, 3 *Per. & D.* 253; 11 *A. & E.* 383, *S. C.*)

A rate for the repair of a wall is bad, unless the want appears upon the proceedings to have been found by a jury. (*Reg.* v. *Matthias*, 2 *Jur.* 13, *Q. B.*)

Where commissioners of sewers had connected and imposed a joint rate upon two divisions or levels formerly drained and rated separately, and an owner of property in one of them disputed the legality of the joint rate, and gave notice to the commissioners that he should move for a *certiorari* to quash it, the court refused an application for a *mandamus* to the commissioners to produce for inspection all commissions, plans, rates, presentments, decrees, accounts, proceedings and minutes of proceedings relating to the district, or any part thereof. (*Reg.* v. *Tower Hamlets* (*Commissioners of Sewers*), 6 *Jur.* 1059, *Q. B.*)

Liability of commissioners.

Liability of Commissioners.]—Where bricklayers employed by the commissioners of sewers to repair a public sewer, performed the work in such a manner as to occasion a damage to a neighbouring house:—Held, that they were liable to an action, although the work itself appeared to be performed in a skilful manner. (*Jones* v. *Bird*, 1 *D. & R.* 497; 5 *B. & Ald.* 837, *S. C.*)

An assessment of commissioners of sewers for the repairs of a sea-bank, is void for want of a presentment by a jury. A distress made for such assessment is therefore illegal, and subjects the commissioners to an action of trespass. (*Wingate* v. *Waite*, 6 *Mee. & W.* 739.)

In order to render commissioners acting in the *bonâ fide* performance of a public duty, liable to an action for an injury to an individual resulting from an act so done by them, it must appear that they have been guilty of negligence or want of skill in the conduct of it. (*Grocers' Company* v. *Donne*, 3 *Scott*, 356; 3 *Bing. N. C.* 34, *S. C.*)

The freehold of Chelsea Hospital is in the crown, and is managed by commissioners, who derive their authority under sect. 35 of stat. 7 Geo. IV. c. 16, and subsequent letters patent from the crown. The hospital consists partly of the governor's house and other distinct houses or apartments, and partly of the pensioners' wards and the chapel of the hospital and the dining-room of the pensioners; also courts and buildings used for common purposes within and by the said hospital. There had been assessments by the commissioners of sewers in respect of the former parts of the hospital, which had been paid by the governor and other residents. In respect of the latter part, one of the clerks of the works was assessed "for buildings not hitherto rated, chapel and wards, and for land." Such assessment was made upon a presentment by the jury, which presentment was traversed, and a verdict found confirming the presentment. The clerks of the works are appointed by the commissioners of woods and forests, who superintend the repairs of the buildings of the hospital:—Held, in an

Liability of commissioners.

action of trespass by the secretary of the hospital, first, that there was no occupier of the pensioners' wards, chapel, and dining-room, and other buildings and land used for common purposes by the hospital, and that the sewers rate was therefore void; secondly, that the commissioners of the hospital, having traversed the presentment, were not estopped by a verdict confirming the presentment, but might bring trespass against the collector for taking goods on the premises in respect of which the assessment was made. (*Neave* v. *Wrather*, 12 *L. J., N. S.*, 32, *Q. B.*)

Where the owner of marsh lands was bound by the custom of a sewage level to repair the sea-walls abutting on his own land, and by an extraordinary flood-tide the wall was damaged, the court refused to grant a *mandamus* to the commissioners of sewers to reimburse him the expense of the repairs; it appearing by affidavit, that the wall had been previously presented for being in bad repair, and was out of repair at the time the accident happened: nor can the other landowners in the level be called upon to contribute to the repairs of such a wall. (*R.* v. *Essex Commissioner of Sewers*, 2 *D. & R.* 700; 1 *B. & C.* 447, *S. C.*)

By the Bedford Level Act, it was enacted, that all conveyances by indenture of the 95,000 acres allotted to the then Earl of Bedford, or any part thereof entered with the registrar of the levels, should be of equal force to convey the freehold and inheritance thereof, as if the same were for valuable considerations enrolled within six months in one of the king's courts of record at Westminster; and that no lease, grant, or conveyance of, or charge out of or upon the 95,000 acres, or any part thereof, except leases for seven years or under in possession, should be of force, but from the time it should be entered with the registrar. Conveyances were afterwards made of part of the 95,000 acres, but were not registered: —Held, that those conveyances were nevertheless valid for all purposes, except for entitling the grantees to the privileges conferred by the act on the owners of lands within the level, and for the other purposes of the act. (*Willis* v. *Browne*, 10 *Sim.* 127.)

Pleading and practice.

Pleading and Practice.]—A declaration in case alleged that it was the duty of the defendant, as owner and proprietor of drains and sewers in and upon premises belonging to the defendant adjoining to the dwelling-house of the plaintiff, to have the same kept, cleansed, and repaired. Breach, that the defendant wrongly suffered the drains and sewers to become foul and in bad repair:—Held, bad on general demurrer. (*Russell* v. *Shenton*, 6 *Jur.* 1083, *Q. B.*)

An information of intrusion stated, that the defendants intruded and made entry on a certain messuage or dwelling-house, situate, &c., and being parcel of the royal palace of Kensington, then in the occupation of our lady the Queen, and which was in the hands and possession of the Queen in right of her crown. The defendants pleaded in the form given by the stat. 23 Hen. VIII. c. 5, s. 11, that they committed the trespasses under the authority of a commission of sewers, for tax assessed by the said commissioners:—Held, on demurrer, that this form of plea was not allowable in an information of intrusion at the suit of the crown. (*Att.-General* v. *Donaldson*, 10 *Mee. & W.* 117.)

A distress cannot be levied for sewers rates within the precincts of a royal palace, occupied as the residence of the sovereign; and Kensington palace is within this description. (*Ib.*)

But it seems that the averment in this information did not sufficiently show the place to be the residence of the sovereign. (*Ib.*)

The presentment need not contain the name of every person benefited; if it find "all Fore Street" to be benefited, that is enough to include every one having a house there; and every one so having a house might traverse such presentment, he stating in his traverse that his property is so situated, and that he is aggrieved by the presentment. (*Warren* v. *Dix*, 3 *C. & P.* 71.)

The warrant of distress need not recite the presentment. (*Id.*)

The defendant is not entitled to recover his treble damages under the

23 Hen. VIII. c. 5, s. 12, in case of a verdict in his favour, or a nonsuit, unless he claims them on the record. (*Id.*)

Pleading and practice as to.

By the 23 Hen. VIII. c. 5, the jury by whom a presentment is made to commissioners of sewers, concerning what lands are within a level, and subject to a certain rate, ought to be summoned by the sheriff from the body of the county, in pursuance of a precept directed to him from the commissioners for that purpose. (*R.* v. *Somerset Commissioners of Sewers*, 7 *East*, 71; 3 *Smith*, 105, *S. C.*)

And a presentment made by a standing jury, constituted according to ancient usage, originally returned by the sheriff at the commencement of every new commission of sewers from certain parishes or districts, composed of land owners there interested in disclaiming the general charges of the level, which jurymen acted for life, unless removed for cause, and only the foreman of whom was summoned by the sheriff on the particular occasion, which foreman thereupon convened the other jurymen, is illegal and void, and the want of jurisdiction of such presenting jury cannot be waived by traversing their presentment, and going to trial before another jury properly returned from the body of the county by who msuch presentment was confirmed. The presenting jury, after being sworn and charged, must also prosecute their inquiry, upon hearing evidence on oath before the commissioners in *curiâ*, and make their presentment thereon, and not upon information collected in *pais*, without oath. (*R.* v. *Somerset Commissioners of Sewers*, 7 *East*, 71; 3 *Smith*, 105, *S. C.*)

And where the precept to the sheriff was to summon "good and lawful men of your county, *and resident within the Tower Hamlets*," that being the district over which the commissioners had jurisdiction, it was held bad, and a presentment made by that jury, and all the subsequent proceedings founded on it were declared to be void. (*Birkett* v. *Crozier*, 3 *C. & P.* 63; 1 *M. & M.* 119, *S. C.*)

By a local act (6 Geo. IV. c. lxx.) certain commissioners were empowered to cause any "present or future sewers, ditches, drains, &c. to be opened, enlarged, altered, or cleansed;" and it was enacted, that in case any action should be brought against any person for anything done in pursuance of the act, or in relation to the matters therein contained, the plaintiff should not recover in any such action if tender of amends should have been made to him, &c., or his attorney, by or on behalf of the defendant, &c., before such action brought; and in case no such tender should be made, that it should be lawful for the defendant by leave of the court to pay money into court; and if the matter should appear to have been done in pursuance and under the authority of the act, and after sufficient satisfaction made or tendered as aforesaid, then that the jury should find for the defendant. The commissioners, of whom the defendant was one, appointed a committee to inspect a certain ditch with a view to widening the same, and to report thereon: the committee having reported thereon in favour of widening, the commissioners appointed a second committee, of whom the defendant was one, to confer with a surveyor respecting the work, with power to two of them to act. The defendant afterwards, being told by the clerk to the commissioners that he might proceed without further instructions from the commissioners, took the plaintiff's land for the purpose of widening the drain, without having given him notice or obtained his consent. The land was taken for the *bonâ fide* purpose of widening the drain. The defendant, before action, tendered 10*l.* as amends, which the plaintiff refused to accept, but no tender was pleaded, nor was the amount paid into court. The jury found the trespass, and that the damage amounted to 5*l.*:—Held, first, that although neither the defendant nor the commissioners were authorized to take plaintiff's land without his consent in writing, yet the defendant was entitled to the protection of the act. (*Jones* v. *Gooday*, 9 *Mee. & W.* 736; 1 *Dowl. N. S.* 914.) Secondly, that the defendant was not bound to plead the tender or pay the amount tendered into court. (*Ib.*)

A sewers jury made a presentment of several persons who received

benefit or avoided damage from certain sewers. One of the persons at a subsequent court delivered in a paper purporting to be a traverse of the presentment. This was specially demurred to by the clerk to the commissioners for informality, and the traverse was held insufficient, and an amended traverse refused, and an assessment made upon the party: in July, 1842, he was distrained upon for the alleged amount of the assessment:—Held, that an application for a *certiorari* to remove the presentment and other proceedings into the court of Queen's Bench, in Easter term, 1843, was made too late.

Semble, that the proceedings in the court of sewers were erroneous, and that the traverse, though informal, or an amended one, should have been received by the court, and its truth properly inquired into. (*Reg.* v. *The Commissioners of Sewers for the Tower Hamlets*, 13 *Law J. Rep.* (*N. S.*) 12, *Q. B.*)

Sexton.

How chosen.

THE sexton (*segsten, segerstane*, the keeper of the things belonging to Divine Worship) is usually chosen by the parish, though sometimes by the minister, where an usage to that effect prevails. His salary depends upon custom, and is paid by the churchwardens. His fees are generally settled by order of the vestry, and a table of them is hung up in the vestry room, or in the church. (*Shaw, Par. L.* 71; *Steer, P. L.* 102.)

Where a sexton had been appointed by the rector, and affidavits were filed, showing a *primâ facie* right in the inhabitants to elect, as well as counter affidavits to show that the right was in the rector, the court refused a *mandamus*, because the evidence was not decisive in favour of the application. It was further said, there was another mode of trying the right, by withholding the fees, or by paying them and bringing an action to recover back the amount; besides, the office was already full by the appointment of the rector, who, by the general law, is the proper person to make it, and strong evidence would be necessary to disprove his authority:—*Quere*, whether a *quo warranto* would lie. (*R.* v. *Stoke Damerel*, 5 *A. & E.* 584.)

Duty of.

His business is to keep the church clean swept and adorned, to open the pews, to make and fill up the graves for the dead, and to provide, under the direction of the churchwardens, candles and necessaries belonging to the church, to get the linen washed, &c., to attend during Divine Service, to keep out excommunicated persons, and to prevent any disturbance in the church. (*Id.*)

A freehold office.

Sextons are considered by the common law to have freeholds in their offices; and, therefore, if they be improperly removed, or for alleged misconduct, a *mandamus* lies to restore them; (*R.* v. *Kingsclere*, 2 *Lev.* 18; *Salk.* 428; *Ile's case*, 1 *Ventr.* 153;) for though they may be *punished*, they cannot be *deprived* by ecclesiastical censures. (2 *Roll. Ab.* 234; *Bac. Ab. Mandamus, C.*)

But a return to a *mandamus* that L. C. was not duly elected sexton according to the ancient custom, and that there is a custom for the inhabitants to remove *at pleasure*, and that L. C. was removed pursuant to such custom, is good. (*R.* v. *Churchwarden of Taunton*, 1 *Cowp.* 413.) So, upon a return to a *mandamus*, that the sexton held his office *at pleasure*, the court decided this to be sufficient, as there was no certificate that he was chosen for life. (*R.* v. *the Churchwardens of Thame*, 1 *Stra.* 115.)

Female sexton.

In the case of *Olive* v. *Ingram*, *Stra.* 1114, two points were made. First, whether a woman was capable of being chosen sexton; and secondly,

whether women could vote in the election. As to the first, the court seemed to have no difficulty about it, there having been many cases where offices of greater consequence have been held by women, and there being many women sextons at that time in London. The authorities cited upon this point were:—*Spelman's Gloss.* 497, a woman appointed governor of Chelmsford workhouse. (2 *Ld. Raym.* 1014.) *Lady Broughton's case*, who was keeper of the Gatehouse. (3 *Keb.* 32; 4 *Inst.* 221; *Dy.* 285; *Hob.* 148.)

And in Brady's "History of Boroughs," it appears that Lady Parkington was returning officer for members at Aylesbury; and the Countess of Pembroke, Dorset, and Montgomery, had the office of hereditary sheriff of Westmoreland, and exercised it in person, sitting with the judges on the bench at the assizes at Appleby. (*Har. Co. Lit.* 326.)

Female electors.

As to the second point, though women cannot vote for members of parliament, or coroners, yet the court, notwithstanding, held, that this being an office that did not concern the public, or the care or inspection of the morals of the parishioners, there was no reason to exclude women, who paid rates, from the privilege of voting, and no usage of excluding them was stated, which might have altered the case. (*Id.*; *Steers, P. L.* 103.)

United parishes.

Where two parishes were united after the fire of London, and one set of officers elected at a joint vestry had served for both, and the office of sexton had been filled in the same way upon nine successive vacancies, and the salary had been paid in equal proportions by both parishes, but afterwards one of the parishes claimed to elect a separate sexton, of which they had given notice to the other; in such case, that other parish cannot maintain an action for money paid to the use of the first parish, for their *quota* of the sexton's salary, for this was paid against their *express consent*. Nor can the right of the sexton be tried in such case without his being a party thereto; nor can he bring his action in such case against both parishes on a *joint* obligation, or against one of them only for the *whole* sum. (*Stokes* v. *Lewis*, 1 *T R.* 20.)

Divided parishes.

In the recent statutes for the erection of additional churches, provision is made for the protection of the interests of sextons in those cases where it is found expedient to create new parishes. The 59 Geo. IV. c. 134, s. 10, enacts, "That when any parish shall be divided under the provisions of those acts, all fees, dues, profits, and emoluments, belonging to the parish clerk, or sexton, respectively, of any parish so divided, shall belong and be recoverable by the clerks and sextons respectively of *each division*, to which they shall be assigned, in like manner and after the same rate as they were recoverable by the clerk and sexton respectively of the original parish; and the commissioners may make compensation for any loss of fees, or emoluments, which any clerk or sexton may sustain, by reason of any such division."

Settlement.

The office of sexton, like that of parish clerk, confers a right of settlement; and if the churchyard lie in *two* parishes, the sexton may gain a settlement in the one in which he resides, although no part of the church lies within that parish. (*Rex* v. *Liverpool*, 3 *T. R.* 118.)

Church keys.

In a case where after a contested election for the office of sexton, an application was made for a *mandamus* to deliver up the keys of the church to the successful candidate, Lord *Ellenborough* said, "Why did they not get new keys? The keys of the church are not like an emblem of office, or the like. If it will probably prevent any breach of the peace we will grant it, but you had better get a new key." (*Anon.* 2 *Chitty, R.* 255; *and see Steer, P. Law*, 104.)

Sheep.

As to Sheep-stealing, *see* "*Larceny*," Vol. III.
As to Cruelty to, *see* "*Cattle and Animals*," Vol. I. p. 533.
As to Slaughter-houses for Sheep, *see* "*Horses*," Vol. III.
As to putting scabbed Sheep on Commons, *see* "*Common*," Vol. I.
As to the Exportation of Sheep, *see* "*Woollen Manufactures*," Vol. VI.

None shall have above 2000 sheep.

The 25 Hen. VIII. c. 13, for the preventing many farms being accumulated into few hands, and for the encouragement of tillage, enacts that no person shall have above two thousand sheep at one time, at six score to the hundred, except it be upon his own inheritance only, and except what are necessary for his household, on pain of forfeiting 3*s.* 4*d.* for every sheep above that number, half to the king, and half to him that will sue.

And if any person shall happen to have more, by reason of being executor or administrator, he shall sell off within a year, till he have 2000.

But sheep bequeathed to a child within age shall not be reckoned in the number.

When lambs are deemed sheep.

Lambs are not to be reckoned sheep till the second Midsummer after they are lambed.

And the justices of the peace may inquire of this offence by a jury, or by information.

Sheriff.

Sheriff, what.

SHERIFF (*shireve*) in Saxon is *scirgerefa*, from *scieran*, to *share* or *divide*, for that the whole realm is parted and divided into *shires*, and *gerefa*, the *comes*, earl or governor, in the Belgic, called *greef* or *grave*. The word *comes* or *count* came first into Europe out of the eastern countries, and the word *county*, in Latin *comitatus*, seemeth to be nothing else but the division or allotment over which the *comes* or *count* had jurisdiction. And when the counts or earls left the custody of the counties, then was the custody thereof committed to the *vicecomits*, or *vicecomites* (which is the Latin name for sheriffs); so called, because they supply the place of the *comes* or earl. The *earl* was otherwise called by the Saxons, *eorl ealdor, ealdorman* (elder or alderman), because they were usually men of age and experience; by a like derivation as that of *senators* among the Romans.

Qualification.

By four several statutes it is enacted that none shall be sheriff, except he have sufficient land within the shire to answer the king and his people, *viz.* 9 Edw. II. st. 2; 4 Edw. III. c. 9; 5 Edw. III. c. 4; 13 & 14 Car II. c. 21.

Who exempted.

In general, no man can be exempt from the office of sheriff but by act of parliament, or letters patent. (*Earl of Shrewsbury's case*, 9 *Rep.* 46.)

By the Militia Act, 42 Geo. III. c. 90, s. 172, no person, being an officer of the *militia*, could be compelled to serve the office of sheriff. But by the 2 & 3 Vict c. 59, s. 1, no person shall be legally exempt from serving the office of sheriff by reason of being an officer of the militia, save only such officers of the militia as were employed in actual service in the militia before the end of the war in 1815.

By sect. 2, if any sheriff shall be an officer of militia at any time when the militia of which he is such officer shall be drawn out and embodied for actual service, he shall be discharged from personally performing the office of sheriff while the militia shall remain embodied, and the under-sheriff shall be answerable for the execution of the office in the name of the high sheriff during the same time; and the security given by the under-sheriff and his pledges to the high sheriff shall stand a security to the Queen, her heirs and successors, and to all persons whatsoever, for the due performing his office during such time.

In the case of *The Mayor of Norwich* v. *Berry*, 4 *Burr.* 2109, it was adjudged that an attorney is exempted from the office of sheriff of a corporation, by reason of his attendance on the courts at Westminster; and, though Lord *Mansfield*, C. J., distinguished this office in a corporation from that of the sheriff of a county, he seemed to think the privilege extended equally to the latter.

The payment of the fine fixed by the 9 Geo. I. c. 9, s. 3, to be discharged from serving the office of sheriff of Norwich, does not exempt the person paying it for more than one year, unless the corporation agree that he shall be discharged for a longer time. (*R.* v. *Woodrow*, 2 *T. R.* 731; *see also*, *R.* v. *Bower*, 1 *B. & C.* 585; 2 *D. & R.* 842, *S. C.*)

At the common law the sheriff was chosen by the county; but, by the 14 Edw. III. st. 1, c. 7, he shall be appointed yearly on the morrow of All Souls (since altered to the morrow of St. Martin), at the Exchequer, by the chancellor, treasurer, and chief baron, taking to them the chief justices. **How chosen.**

Except in London, and where the office is a man's freehold or inheritance. (23 Hen. VI. c. 8.)

By the 3 Geo. I. c. 15, s. 18, the sheriff (except in Wales and Chester(*a*)), at the entering upon his office, shall take the following oath (to be administered in pursuance of a writ of *dedimus potestatem*):— **Sheriff's oath of office.**

"I, A. B., do swear, that I will well and truly serve the king's majesty in the office of sheriff of the county of , and promote his majesty's profit in all things that belong to my office, as far as I legally can or may; I will truly preserve the king's rights, and all that belongeth to the crown; I will not assent to decrease, lessen, or conceal the king's rights, or the rights of his franchises; and, whensoever I shall have knowledge that the rights of the crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in any other matter or thing, I will do my utmost to make them be restored to the crown again; and if I may not do it myself, I will certify and inform the king thereof, or some of his judges: I will not respite or delay to levy the king's debts for any gift, promise, reward, or favour, where I may raise the same without great grievance to the debtors; I will do right, as well to poor as to rich, in all things belonging to my office; I will do no wrong to any man for any gift, reward, or promise, nor for favour or hatred; I will disturb no man's right, and will truly and faithfully acquit at the exchequer all those of whom I shall receive any debts or duties belonging to the crown: I will take nothing whereby the king may lose, or whereby his right may be disturbed, injured, or delayed; I will truly return and truly serve all the king's writs, according to the best of my skill and knowledge; I will take no bailiffs into my service but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation: I will truly set and return reasonable and due issues of them that be within my bailiwick, according to their estate and circumstances, and make due panels of persons able and sufficient, and not suspected or procured, as is appointed by the statutes of this realm; I have not sold or let to farm, nor contracted for, nor have I granted or promised for reward or benefit, nor will I sell or let to farm, nor contract for, or grant for reward or benefit, by myself or any other person for me, or for my use, directly or indirectly, my sheriffwick, or any bailiwick thereof, or any office belonging

(*a*) The Welsh judicature, &c., is abolished by the 1 Will. IV. c. 70. (*See title*, "*Wales*," Vol. VI.)

thereunto, or the profits of the same, to any person or persons whatsoever; I will truly and diligently execute the good laws and statutes of this realm; and, in all things, well and truly behave myself in my office, for the honour of the king and the good of his subjects, and discharge the same according to the best of my skill and power. So help me God."

By the 5 & 6 Will. IV. c. 28, no person chosen a sheriff of a city or town shall thereby be liable to make the declaration in 9 Geo. IV. c. 17: Provided always, that every person so elected or chosen to the said office of sheriff shall take, make, and subscribe, within the time required by law, all oaths and declarations which sheriffs of counties are bound to take, make, and subscribe.

Refusing to take office.

The court of King's Bench granted an information against a person refusing to take on him the office of sheriff, because the vacancy of the office occasioned a stop to public justice; and the year would be nearly expired before an indictment could be brought. (*R.* v. *Woodrow*, 2 *T. R.* 781.)

Appointment of sheriff.

By the 3 & 4 Will IV. c. 99, s. 3, "Whenever any person shall be duly pricked or nominated by his majesty for and to be sheriff of any county in England or Wales, except the county palatine of Lancaster, the same shall be forthwith notified in the *London Gazette*, and a warrant in the form set forth in the schedule to this act shall be forthwith made out and signed by the clerk of the privy council, and transmitted by him to the person so nominated and appointed sheriff as aforesaid; and the appointment of sheriff thereby made shall be as good, valid, and effectual in the law to all intents and purposes whatsoever, as if the same had been made by patent under the great seal of Great Britain, or by any ways and means heretofore in use; and the sheriff or sheriffs so appointed as aforesaid shall thereupon, and upon taking the oath of office hereafter mentioned, have and exercise all powers, privileges, and authorities whatsoever usually exercised and enjoyed by sheriffs of counties in England and Wales, without any patent writ of assistance or other writ whatsoever, or entering into any recognizance by himself or sureties, and without payment of or being liable to pay any fees whatsoever for the same."

Clerk of peace to enrol duplicate.

Sect. 4 provided, "That the duplicate of the said warrant shall, within ten days next after the date of the same warrant, be transmitted by the said clerk of the privy council to the clerk of the peace of the county for which such person shall be nominated and appointed sheriff, to be by the said clerk of the peace enrolled, and which he is hereby required to enrol and keep without fee or reward."

Oaths of sheriff and under-sheriff

Sect. 6. "Each and every person so appointed sheriff and under-sheriff as aforesaid, except the sheriffs of London and Middlesex and their under-sheriffs, shall, before he enter upon the execution of his office, take the oath of office heretofore and now required by law, which oath shall be fairly written on parchment (without being subject to any stamp duty) and signed by him, and shall and may be sworn before the barons of his majesty's Exchequer or any of them, or any one of his majesty's justices of the peace for the county of which he shall be appointed sheriff or under-sheriff; and the same shall be thereupon transmitted to the clerk of the peace for the same county, who is hereby required to file the same among the records of his office, and for which he shall be entitled to demand and have from such sheriff or under-sheriff the sum of 5s., and no more."

By the 4 Hen IV. c. 5, the sheriff in person shall continue within his bailiwick, and shall not let it to farm.

Sheriff selling inferior offices.

And by the 3 Geo. I. c. 15, s. 10, none shall buy, sell, let, or take to farm the office of under-sheriff, gaoler, bailiff, or other office, pertaining to the office of high sheriff, on pain of 500*l.*, half to the king and half to him that shall sue in (two years). (*See ante*, "*Office and Officer.*")

Appointment of the under-sheriff.

By the 3 Geo. I c. 15, s. 11, the under-sheriff shall be appointed by the high sheriff, because he shall answer for him; and, by sect. 19, he shall take the like oath as the high sheriff, *mutatis mutandis*. And see as to the oath, 3 & 4 Will. IV. c. 90, s. 6, *supra*.

By 3 & 4 Will. IV. c. 90, s. 5, "From and after the passing of this

act every person so appointed sheriff as aforesaid (*supra*) shall, within one calendar month next after the notification of his appointment in the *London Gazette*, by writing under his hand, nominate and appoint some fit and proper person to be his under-sheriff, and shall transmit a duplicate thereof to the clerk of the peace for the county, to be by him filed, and which he is hereby required to file, among the records of his office, and for which he shall be entitled to demand and have from such under-sheriff the sum of 5*s*., and no more; and such appointment and duplicate shall not be liable to any stamp duty whatever."

An inquisition, taken before two under-sheriffs extraordinary, was set aside; for the high sheriff can appoint only *one* under-sheriff extraordinary. (2 *Wils.* 378.)

The 7 Will. IV. & 1 Vict. c. 55, for the better regulating of sheriffs' fees, repeals, amongst other provisions, so much of the 42 Edw. III. "as relates to the time during which under-sheriffs and sheriffs' clerks may abide in their respective offices;" so that now it seems there is no objection to successive sheriffs appointing the same under-sheriffs. (*See Harrison* v. *Paynter*, 6 *M. & W.* 387; 8 *Dowl.* 249, *S. C.*)

By the 1 Hen. V. c. 4, no under-sheriff, sheriff's clerk, receiver, nor sheriff's bailiff, could act as an attorney in the king's courts, during the time that he is in office with any sheriff; but this is now repealed by the 6 & 7 Vict. c. 73.

An under-sheriff cannot refuse to execute process till he has his fees. (*Heskett's case*, 1 *Salk.* 330.)

Deputy sheriff.

By 3 & 4 Will. IV. c. 42, s. 20, after the 1st of June, 1833, "the sheriff of each county in England and Wales shall severally name a sufficient deputy, who shall be resident or have an office within one mile from the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting of all rules and orders to be made on or touching the execution of any process or writ to be directed to such sheriff." Any negligence by the sheriff in omitting to appoint a deputy according to this act, would subject him to an action, if a party sustained damage thereby. (*See Brackenbury* v *Laurie*, 3 *Dowl.* 180.) A delivery of a writ to this deputy in London is a delivery to the sheriff, and in the case of a writ of *fi. fa.* such delivery binds the goods of the defendant. (*Harris* v. *Lloyd*, 5 *M. & W.* 406; *Woodland* v. *Fuller*, 11 *Ad. & E.* 859; 3 *P. & D.* 570, *S. C.*)

Sheriffs' officers.

The sheriff also appoints officers and bailiffs for the execution of writs directed to him; and as a security for their due performance of their office, and to indemnify him from any loss arising from their breach of it, he takes from them a bond with sureties. These officers are in no respect officers of the courts, and are not subject to the jurisdiction of the courts as such from their undertakings or otherwise; (*Brown* v. *Gerard*, 3 *Dowl.* 217; 1 *C. M. & R.* 595, *S. C.* *See Harding* v. *Hall*, 10 *M & W.* 42;) though for extortion they may be so, under the 7 Will. IV. & 1 Vict. c. 55.

Every bailiff, when he gives security, upon entering into his office, shall make it part of the condition of such security that he will deliver a copy of the clauses in the 32 Geo. II. c. 28, concerning the carrying of prisoners for debt to alehouses (which is inserted more at large in *title "Gaols," &c.* Vol. III.)

And by the 27 Eliz. c. 12, s. 2, such bailiff, or other person returning juries, or intermeddling with processes, shall take the following oath of office, before a judge of assize, or the *custos rotulorum*, or two justices of the peace (one of them being of the quorum):—

Officer's oath

"*I, A. B., shall not use or exercise the office of bailiff corruptly during the time that I shall remain therein, neither shall nor will accept, receive, or take, by any colour, means, or device whatsoever, or consent to the taking of any manner of fee or reward of any person or persons for the impanelling or returning of any inquest, jury or tales, in any court of record, for the Queen, or betwixt party and party, above 2s. or the value thereof, or such fees as are*

allowed and appointed for the same by the laws and statutes of this realm, but will according to my power, truly and indifferently, with convenient speed, impanel all jurors, and return all such writ or writs touching the same as shall appertain to be done by my duty or office, during the time that I shall remain in the said office. So help me God."

Sects. 4, 6. Persons acting before they have taken the said oath shall forfeit 40*l.*; half to the king, and half to him that shall sue in the sessions, or other court of record.

Sect. 5. If they commit any act contrary to their said oath, they shall forfeit (in like manner) to the party grieved his treble damages.

And the sheriff's bailiffs shall not be in the same office in three years after, (1 Hen. V. c. 4,) except in London, Middlesex, Durham, Westmoreland, and towns being counties of themselves. (3 Geo. I. c. 15, s. 21.)

The sheriff and bailiff are not both answerable in an action for a penalty for the same act. (*Peshall* v. *Martin*, 2 *T. R.* 712.)

But, after verdicts in both actions, the court will stay proceedings in both, on paying one penalty, and the costs in one action. (*Peshall* v. *Martin*, 2 *T. R.* 712.)

By the 6 Geo. IV. c. 50, s. 2, sheriffs' officers are exempt from serving on juries. (*See "Jurors,"* Vol. III.)

Special bailiff.

The sheriff frequently, and as he may do, at the request of the party suing out the writ, or his attorney, appoints a particular person to execute it. Such person is called a special bailiff. (*See Foster* v. *Bladelock*, 5 *B. & Cres.* 531; *Doe* v. *Trye*, 7 *Scott*, 704; 7 *Dowl.* 636, *S. C. And see further*, as to what amounts to an appointment of a special bailiff, *Corbet* v. *Brown*, 6 *Dowl.* 794; *Balson* v. *Meggatt*, 4 *Dowl.* 557.)

Liability for misconduct of under-sheriff or officer.

On principles of public policy, a sheriff is liable civilly for the tortious act, default, or misconduct, whether it be wilful or inadvertent, of his under sheriff or bailiff, in the course of the execution of their duties, (*Woodgate* v. *Knatchbull*, 2 *T. R.* 151; *Peshall* v. *Layton*, *Id.* 712; *Sturmy* v. *Smith*, 11 *East*, 25; *Crowder* v. *Long*, 8 *B. & C.* 602; 3 *Man. & Ry.* 17; *Willett* v. *Sparrow*, 6 *Taunt.* 576; *Harding* v. *Hall*, 10 *M. & W.* 42; *Raphael* v. *Goodman*, 8 *Ad. & E.* 565; *Scarfe* v. *Halifax*, 7 *M. & W.* 296, *per Parke, B.*); and upon this principle, the sheriff cannot recover upon a bond obtained by the fraud of his officer. (*Raphael* v. *Goodman*, 8 *Ad. & E.* 565.) And in one case it was held, that the sheriff is civilly liable for whatever the bailiff improperly does under colour of the writ; and therefore that the sheriff is liable if the officer take a person under a *fi. fa.* (*Smart* v. *Hutton*, 8 *Ad. & E.* 568, *n.*) But if the wrong complained of be neither expressly sanctioned by the sheriff, nor impliedly committed by his authority—if it be an act not within the scope of the authority given, the sheriff is not responsible. (*Cook* v. *Palmer*, 6 *B. & C.* 739; *Crowder* v. *Long*, 8 *Id.* 598; *Tomkinson* v. *Russell*, 9 *Price*, 287; *Bowden* v. *Waikman*, 5 *Moore*, 183; *Stuart* v. *Whittaker*, 1 *R. & M.* 310.) And if the plaintiff in an action, or an execution creditor, induce the plaintiff to depart from the ordinary course of his duty, without the sheriff's knowledge, (*Cook* v. *Palmer*, 6 *B. & C.* 739; 9 *Dow. & Ry.* 723; *Crowder* v. *Long*, 8 *Id.* 598; 3 *Man. & Ry.* 17, *S. C.*,) or collude with the officer, (*Raphael* v. *Goodman*, 8 *Ad. & E.* 565; *Crowder* v. *Long*, *supra*,) it is not competent to such plaintiff or execution creditor to fix the sheriff for the consequences. Also the sheriff is not liable to the execution creditor for the misconduct of a bailiff specially appointed by him. Nor is the sheriff liable for any acts of his bailiff, committed whilst executing process issued out of the county court. (*Pitcher* v. *King*, 9 *Ad. & Ell.* 288; 1 *P. & D.* 297, *and see cases there cited.*)

The sheriff is not liable to the party appointing the *special bailiff* for the acts of that officer. Therefore, where a plaintiff appoints his own bailiff to execute a writ for the arrest of the defendant, the sheriff is relieved from all responsibility until the defendant is arrested, and delivered into the actual custody of the sheriff. (*Ford* v. *Leeke*, 1 *Nev. & P.* 737;

Taylor v. *Richardson*, 8 *T. R.* 505.) And the sheriff cannot even be ruled by the party appointing the bailiff to return the writ, (*Demoranda* v. *Dinkin*, 4 *T. R.* 119; *Beckford* v. *Welby*, 2 *Esp.* 591; *Higgins* v. *M'Adam*, 3 *P. & Y.* 114; *Pallister* v. *Pallister*, 1 *Chit. Rep.* 614, *n.*; *Porter* v. *Viner*, *Id.* 613; *Hamilton* v. *Dalziel*, 2 *Wm. Bl.* 952; *Harding* v. *Holder*, 9 *Dowl.* 659; 3 *Scott, N. R.* 293; 2 *Man. & G.* 914, *S. C.*) unless perhaps it be only for the purpose of enabling the plaintiff to issue another writ, or the like. (*Harding* v. *Holder*, *supra.*)

Courts of sheriff.

The sheriff hath a jurisdiction both in criminal and civil cases; and for this purpose he hath two courts,—his *tourn* for criminal causes, which is therefore the Queen's court; the other in his *county court* for civil causes, and this is the court of the sheriff himself. (3 *Salk.* 322. *See* "*County Court*," Vol. II.; "*Tourn*," Vol. VI.)

A sheriff has no authority to order a freeholder into custody, and to take him before a magistrate, if he interrupt the proceedings at a county court, held for the election of knights of the shire, by making a noise and disturbance. (*Spilsbury* v. *Micklethwaite*, 1 *Taunt.* 146.)

Sheriff, how far amenable to magistrates.

The sheriff, having a justice of the peace's warrant directed to him, shall execute the same; but he need not go in person to execute it, but may authorize another to do it. (2 *Haw. c.* 13, *s.* 29.)

And it is no excuse to the sheriff to return that he could not execute a precept because of resistance; for he may take with him the power of the county. (13 Ed. I. st. 1, c. 39.)

Also, the sheriff, on summons, is bound to attend the sessions of the peace, there to return his precepts, to take the charge of the prisoners, to receive fines for the Queen, and the like. (2 *Haw. c.* 8, *s.* 45.)

And it seems clear, from the general reason of the law, which gives all courts of record a kind of discretionary power over all abuses by their own officers, that the sheriff is punishable by the justices in sessions for defaults in executing their writs and precepts. (2 *Haw. c.* 22, *s.* 2.)

Taking recognizances.

In the case of *Bengough and another* v. *Rossiter*, 4 *T. R.* 505. it was determined that a sheriff has no authority to take a *bond* for the appearance of persons arrested by him, under process issuing upon an indictment at the quarter sessions for a misdemeanor; he can only take a *recognizance* for their appearance. (*See* "*Bail*," Vol. I.)

Sheriff a conservator of the peace,

Every sheriff is a principal conservator of the peace, by the common law, and may, *ex officio*, award process of the peace, and take surety for it: and it seems to be the better opinion, that the security so taken by him is, by the common law, looked on as a recognizance, or matter of record, and not as a common obligation. (2 *Haw. c.* 8, *s.* 4.)

but not to act as justice.

But by 1 Mar. Sess. 2, c. 8, no sheriff shall exercise the office of a justice of the peace in any county wherein he is sheriff; and, in such case, his acts as a justice shall be void.

Duty at assizes.

The sheriff's duty, before and at the assizes, consists in, 1st, proclaiming assize; 2ndly, summoning the different juries—viz. the grand jury, *nisi prius* jury, crown jury, and also the special juries, if any, and granting views; (*see* "*Jurors*," Vol. III.;) 3dly, making his return to the assize precepts: 4thly, making and delivering a list of the prisoners to the judges, attending the judges, and providing them lodgings, &c.

The sheriff makes the required proclamation, by inserting an advertisement in the county newspapers. In some counties this is done by placarding printed proclamations in the principal towns and villages throughout the county. (*Watson's Sheriff*, 276.)

The sheriff, as well as his under-sheriff, must be in constant attendance on the judges during the whole of the assizes, and should provide the judges with lodgings, according to the custom of the particular county.

The sheriff should also go in state to meet the judges at the accustomed place, before they enter the town.

These, and other ceremonies, vary in different counties, and the under-sheriff may readily inform himself of what attention he should pay the judges.

The under-sheriff has a great many payments to make, to the criers, to the attendants of the judges, to his javelin-men, &c. &c.; these are also regulated by custom.

For payments for the judges' lodgings, and other payments, as rewards, &c., he should take receipts, and these will be allowed him in his accounts. (*See "Assizes,"* Vol. I.; *post, "Shire-Hall."*)

Execution of a criminal.

In case of any person being condemned to death, and left for execution, the under-sheriff should attend, and also collect his constables, bailiffs, and all the disposable civil force he can command, to attend the execution. (*See Watson's Sheriff*, 278; *title "Execution,"* Vol. II.)

Sheriff's duty at sessions.

The sheriff's duty, before and at sessions, chiefly consists in proclaiming the sessions, in returning the grand jury, and giving notice to all stewards, constables, bailiffs of hundreds and liberties, and other officers.

He is bound to provide and make ready a fit and decent place for holding the sessions, unless where this duty is otherwise repealed by statute. (*Dalt. J.* 372.)

He should attend the sessions by himself or his deputy, on summons, to return his precepts, receive fines for the Queen, and take charge of prisoners; and if he neglect to do so, he may be fined by the court. (*Dick. Sess.* 50.)

The under-sheriff, at the sessions, receives all fines paid there.

He is also to pay the justices of the peace their wages, viz. 4*s. per diem*, and 2*s.* to the clerk of the peace, which will be allowed the sheriff in his accounts. (*Watson*, 280.)

The sheriff must execute the writs and precepts of justices in session, and he is responsible to the court of which he is an officer, though he execute any process by deputy. (2 *Haw. c.* 22.)

Sheriff to have the keeping of gaols.

By the 14 Edw. III. st. 1, c. 10, and 19 Hen. VII. c. 10, the sheriff shall have the keeping of gaols; and, at the expiration of his office, the custody of the county gaol is vested in his successor. (And see as to the duties of a sheriff as gaoler, 1 *Ld. Raym.* 136; *and title "Gaol,"* Vol. III.)

Duties as gaoler.

In all *civil* causes, as in cases of imprisonment for debt, the sheriff or gaoler (at the election of the party) shall be answerable for escapes suffered by the gaoler; but if the gaoler suffer a *felon* voluntarily to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler; but the sheriff may be indicted, fined, and imprisoned. (1 *Hale*, 597.)

Sheriff answerable for money levied by him.

Where the sheriff levies money on a *fieri facias*, the plaintiff may have an action of debt against him for the money, because it was received by him to the plaintiff's use, and the defendant is discharged of it; and it lies against his executors, if he die. (3 *Salk.* 323.)

How long he shall continue in office.

By the 14 Edw. III. st. 1, c. 7, and the 28 Edw. III. c. 7, no sheriff shall continue in his office above one year, except in London, Middlesex, and towns being counties of themselves, and where the office is a man's freehold or inheritance. See the 23 Hen. VI. c. 8; 3 Geo. I. c 15, s. 21.

And by the 1 Rich. II. c. 11, none that hath been sheriff shall be so again within three years, if there be other sufficient.

But by the 17 Edw. IV. c. 6, the sheriff may hold his office after the year, during Michaelmas and Hilary terms, if not before lawfully discharged.

Sheriff dying before the expiration of his office.

By the 3 Geo. I. c. 15, s. 8, if the sheriff shall die before his office shall be expired, the under-sheriff shall execute the same in the deceased sheriff's name, till a new sheriff be sworn, and be answerable for the execution thereof, as the deceased sheriff would have been.

Passing his accounts.

The manner of passing his accounts is directed at large by the 3 & 4 Will. IV. c. 99; which, being foreign to our purpose, is not here inserted. The 10th section of that act enacts, that the oath or affidavit of the sheriff as to his accounts, may be sworn before a justice of the peace. As to the passing of his accounts when sheriff of Chester or Wales, see 1 Will IV. c. 70, s. 33.

Prisoners and

By the 3 & 4 Will. IV. c. 99, s. 7, "Every sheriff of any county, city,

liberty, division, town corporate, or place, shall at the expiration of his office make out and deliver to the new or incoming sheriff a true and correct list and account under his hand of all prisoners in his custody, and of all writs and other process in his hands not wholly executed by him, with all such particulars as shall be necessary to explain to the said incoming sheriff the several matters intended to be transferred to him, and shall thereupon turn over and transfer to the care and custody of the said incoming sheriff all such prisoners, writs, and process, and all records, books, and matters appertaining to the said office of sheriff; and the said incoming sheriff shall thereupon sign and give a duplicate of such list and account to the sheriff going out of office, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned and transferred to the said incoming sheriff, and the further charge of the execution of the writs, process, and other matters therein contained, without any writ of discharge, or other writ whatsoever; and the said incoming sheriff shall thereupon stand and be charged with the said prisoners, and also with the execution and care of the said writs, process, and other matters, contained in the said list and account, as fully and effectually as if the same writs and process had been turned over by indenture and schedule; and in case any sheriff shall refuse or neglect at the expiration of his office to make out, sign, and deliver such list and account as aforesaid, and to turn over the process aforesaid in manner aforesaid, every such sheriff so neglecting or refusing shall be liable to make such satisfaction by damages and costs to the party aggrieved as he, she, or they shall sustain by such neglect or refusal."

Writs to be turned over to successor.

A *fi. fa.* under which goods have been seized and sold is wholly executed within the meaning of the above act, though the sheriff has not handed over the money to the party entitled to it. (*Harrison* v. *Paynter*, 6 *M. & W.* 387; 8 *Dowl.* 349, *S. C.*)

The new sheriff is not liable for any neglect in the execution of a writ delivered to his predecessor, (*see Davidson* v. *Seymour*, *M. & M.* 34,) or to an attachment for not returning it, unless it has been duly transferred to him. (*Thomas* v. *Newman*, 2 *Dowl. N S.* 33; *Holmes* v. *Elnitts*, 6 *Jur.* 994.) But he would it seems be liable to an action for an escape of a party if he became sheriff on the death of his predecessor, in which case he is bound at his peril to take notice of all the executions against any persons whom he finds in the gaols. (*Westbey's case*, 3 *Russ.* 72 *b.*; *Cro. Eliz.* 366.) In the meantime the under-sheriff of the former sheriff is responsible. (3 Geo. I. c. 15, s. 8.)

SCHEDULE to which the 3 & 4 WILL. IV. c. 99 refers.

At the court at , the day of , present the king's most excellent majesty in council.

To A. B. of, &c.

Whereas his majesty was this day pleased, by and with the advice of his privy council, to nominate and appoint you for and to be sheriff of the county of during his majesty's pleasure: these are therefore to require you to take the custody and charge of the said county, and duly to perform the duties of sheriff thereof during his majesty's pleasure; and whereof you are duly to answer according to law.

Dated this day of .

By his majesty's command.
C. D.

Ships.

As to Seamen in general, *see* "*Seamen*," *ante*.
As to Stealing from Ships, *see* "*Larceny*," Vol. III.
As to Plundering Wrecks, &c., *see* "*Wreck*," Vol. VI.
As to Assaults relative to Ships, &c., *see* "*Assault*," Vol. I.
As to going abroad, *see* "*Foreign Service*," Vol. III.
As to Piracy, *see* "*Piracy*," *ante*.
As to Trial of Offences at Sea, *see* "*Admiralty*," Vol. I.
As to Offences tending to the loss of Vessels, &c., exhibiting False Lights, and Plundering Wrecks, &c., *see* "*Wreck*," Vol. VI.
As to the Offence of preventing Seamen from Working, *see* "*Seamen*," *ante*.
As to Regulations of Shipping, &c. on the River Thames, *see* "*Thames*," Vol. VI.
As to Naval and Military Stores, *see* "*Stores*," *post*.

Herein—

I. *Burning or Destroying Ships*, p. 1010.

II. *Burning Ships with Intent to Murder*, p. 1012.

III. *Destroying Parts of Ships*, p. 1013.

IV. *Damaging Ships otherwise than by Fire*, p. 1013.

V. *Burning or Destroying, &c. Queen's Ships and Magazines, &c.*, p. 1014.

VI. *Offences as to the Registry, &c. of Ships, Evidence of Registry*, p. 1014.

VII. *Regulations, &c. as to Passengers*, p. 1018.

VIII. *The Pilot Act, and Regulations, &c., as to Pilots*, p. 1038.

IX. *The Navigation Act*, p. 1068.

X. *Cordage for Shipping*, p. 1071.

I. Burning or Destroying Ships.

Setting fire to or destroying a ship.

Stat. 7 Will. IV. & 1 Vict. c. 89, s. 6, enacts, "That whosoever shall unlawfully and maliciously set fire to, or in anywise destroy, any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in anywise destroy, any ship or vessel, with intent thereby to prejudice any owner or part-owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term

of the natural life of such offender, or for any term not less than fifteen years, or to be imprisoned for any term not exceeding three years." The imprisonment may be with or without hard labour, and with or without solitary confinement, such confinement not exceeding one month at any one time, nor three months in any one year. (*Id. s.* 12.)

1. *Setting Fire to, &c.*

This offence is not triable at any quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

Not triable at Sessions.

In *R.* v. *Onesiphorus Bowyer and Charles Harper, Gloucester Spring Assizes*, 1831, 4 *C. & P.* 559, the defendants were indicted on the 7 & 8 Geo. IV. c. 30, s. 10, *post*, 1013, for damaging a wherry boat. It was objected, that the statute did not apply to such a boat, that it was meant to provide a remedy for a greater mischief, viz., the injuring a merchant or other ship. *Patteson*, J., said it was important, with a view to other cases, to ascertain whether the words "ship" or "vessel" applied to a boat of this description, and therefore he would, in the event of a conviction, save the point for the opinion of the judges. The jury, however, found the defendants not guilty. It is submitted that the objection raised was a tenable one.

What a ship within the act.

Upon an indictment for firing a barge, *Alderson*, J., said, that, if the prisoner was convicted, he would take the opinion of the judges as to whether a barge was within the meaning of the statute: the prisoner was acquitted. (*R.* v. *Smith*, 4 *C. & P.* 569.)

The ownership of the vessel must be proved as described in the indictment. Where, upon an indictment against the defendant, for setting fire to a ship with intent to prejudice E. and G. his part-owners, it appeared that the defendant had declared that E. and G. were part-owners, and a bill of sale was produced, by which forty-three sixty-fourths of the vessel were transferred by the defendant, the sole owner, to E. and G.: and also an entry in the books of registry, in the following form:—"Custom House, Padstow, 11th August, 1829, W. P., of &c., has sold by bill of sale, dated &c. forty-three sixty-fourth shares, to N. G., of &c., and R. E., of &c. Signed." &c.—and it was objected that the bill of sale was not valid, because, by statute 6 Geo. IV. c 110, s. 37, the entry must contain not only the date of the bill of sale, but also the date of the production of it; the judge thought that the date, 11th August, in the commencement of the entry, might be considered as the date of the production of it, particularly as the entry followed the form given by the statute; and it was holden, that the defendant was properly convicted. (*R.* v. *Philp, R. & M. C. C.* 263.) It would seem, that acts of ownership would alone be sufficient to prove this allegation, liable, however, to be rebutted by the entry in the register. (*Jervis, Arch. C. L. 9th ed.* 323.) The burning of a ship, of which the defendant was a part-owner, is within the statute. (*Reg.* v. *Wallace*, 1 *C. & Mar.* 200.)

Ownership.

The destruction of a vessel by a part-owner shows an intent to prejudice the other part-owners, though he has insured the whole ship, and promised that the other part-owners shall have the benefit thereof. (*R.* v. *Nevill*, 1 *Mood. C. C.* 458; *See Reg.* v. *Wallace*, 1 *C. & Mar.* 200.)

If the ship had only run aground, and were afterwards got off in a condition so as to be easily refitted, it seems it would not be an offence within the act. (*See R.* v. *De Londo*, 2 *East, P. C.* 1098.)

What a destruction, &c. of ship.

The offence in an indictment for destroying a ship with intent, &c., must be proved to have been committed with the intent charged in the indictment. Proving that it was done wilfully is of itself sufficient evidence from which the jury may presume that it was committed with intent to prejudice either the owner or part-owner of the ship, or of the goods; but if the intent charged be to prejudice the underwriters, you must prove the policy. (*See R.* v. *Gilson, R. & R.* 138.)

Commencement as usual, as *ante*, 11.] *on the day of , A. D. , at the parish of , in the said county, a certain ship and vessel*

Commitment for setting fire to or destroying a ship.

1. *Setting Fire to, &c.*

called the , whereof A. B. was the owner, unlawfully, maliciously, and feloniously, did set fire to and destroy [or, *destroy*], *with intent thereby there to prejudice the said A. B.; against the form of the statute in that case made and provided. And you, the said keeper, &c.* [as usual, to the end].

Indictment for a like offence.

Admiralty of England (*a*): *The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our sovereign lady the now Queen Victoria, with force and arms, a certain ship and vessel called the , upon the high seas then being, and whereof one A. B. was then and there the owner, and within the jurisdiction of the admiralty of England, unlawfully, maliciously, and feloniously, did set fire to and destroy* [or, *destroy*]; *against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.* [Add other counts, as the case may suggest.]

Commitment for setting fire to or destroying a ship, to prejudice the owner or underwriters, on like stat.

Commencement as usual, *ante*, p. 11, (No. 1.)] *on the day of , A.D. , at the parish of in the said county, a certain ship and vessel called the , whereof one A. B. was then and there the owner, upon the high sea then being, unlawfully, maliciously, and feloniously, did set fire to* [or, *cast away*, or *destroy*, according to the fact], *with intent thereby then and there to prejudice the said A. B.* [or, *one E. F., the owner of certain goods and chattels then and there being on board of the said ship and vessel.*] [or, *G. H. and I. K., who had before then severally underwritten a certain policy of insurance on the said ship and vessel*, or, *on the freight of the said ship and vessel*. or, *on certain goods and chattels then and there being on board of the said ship and vessel*]; *against the form of the statute in that case made and provided. And you, the said keeper, &c.* [as usual, to the end].

Indictment for a like offence.

Admiralty of England: The jurors for our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , mariner, on the day of , in the year of the reign of our sovereign lady the now Queen Victoria, with force and arms, on board a certain ship called the [*Hebe*], *the property of E. F., on a certain voyage upon the high seas then being, then and there upon the high seas and within the jurisdiction of the admiralty of England, feloniously, unlawfully, and maliciously, did set fire to the said ship, with intent thereby then and there to prejudice the said E. F., the owner* [or, *part-owner*] *of the said ship*. [or, *one E. F., the owner of certain goods then and there laden and being on board the said ship*; or, *one E. F., who had before then underwritten a certain policy of insurance on the said ship*; or, *on the freight of the said ship*; or, *on certain goods then being on board the said ship*,] *which said policy was then in full force and operation; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.* [If the offence be committed within the body of a county, state the venue as in the Form, *supra*.]

II. Burning Ships with Intent to Murder.

Burning ships with intent to murder

By 7 Will. IV. & 1 Vict. c. 89, s. 4, "Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and, being convicted thereof, shall suffer death."

This sentence may be recorded. (4 Geo. IV. c. 48.)

The offence is not triable at any quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

(*a*) If the offence be committed in the body of a county, state the venue as in other cases.

III. Destroying Parts of Ships, &c.

3. *Destroying Parts of Ships, &c.*

Destroying parts of ships, &c.

The 7 Will. IV. & 1 Vict. c. 89, s. 8, enacts, "That whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for any term not exceeding fifteen years nor less than ten years, or to be imprisoned for any term not exceeding three years."

The punishment of imprisonment may be accompanied with or without hard labour, and with or without solitary confinement, such confinement not exceeding one month at any one time, nor three months in any one year. (*Id. s.* 12.)

IV. Damaging Ships otherwise than by Fire.

Damaging ships otherwise than by fire.

By stat. 7 & 8 Geo. IV. c. 30, s. 10, "If any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit), in addition to such imprisonment."

The imprisonment may be accompanied with or without hard labour for the whole or any part of the imprisonment, and with or without solitary confinement, (7 & 8 Geo. IV. c. 30, s. 27,) such confinement not exceeding one month at any one time, nor three months in any one year, (7 Will. IV. & 1 Vict. c. 90, s. 5;) not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped, in addition to the imprisonment, if the court shall think fit. (7 & 8 Geo. IV. c. 30, s. 10.)

As to what vessels are within the enactment, and the proof of ownership, *see ante*, 1011.

Commitment for damaging a ship, otherwise than by fire, with intent to destroy it, &c.

Commencement as usual, as *ante*, p. 11.] *on the day of , A. D. , at the parish of , in the said county, a certain ship and vessel called the , upon the high seas then being, one A. B., then and there being the owner thereof, unlawfully, maliciously, and feloniously, did damage otherwise than by fire, with intent then and there feloniously to destroy the said ship and vessel, and to render the same useless: against the form of the statute in that case made and provided. And you, the said keeper, &c.* [as usual to the end].

Indictment for a like offence

Admiralty of England: The jurors of our lady the Queen upon their oath present, that C. D., late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, a certain ship and vessel called the , upon the high sea then being, one A. B. being then and there the owner thereof, then and there upon the high sea, and within the jurisdiction of the admiralty of England, unlawfully, maliciously, and feloniously, did damage the said ship and vessel otherwise than by fire, with intent then and there feloniously to destroy the said ship and vessel, [or, *to render the said ship and vessel useless*]; *against the form of the statute in that case made and provided, and against the peace of our lady the Queen, her crown and dignity.* [Add other counts as the case may suggest.]

V. Burning or Destroying Queen's Ships and Magazines, &c.

5. Burning or Destroying, &c. Queen's Ships and Magazines.

Persons who shall wilfully set on fire ships of war, in any of his majesty's dock-yards, or any military, naval, or victualling stores, &c., shall suffer death, as in cases of felony.

By the 12 Geo. III. c. 24, after reciting that "the safety and preservation of his majesty's ships of war, arsenals, magazines, dock-yards, rope-yards, victualling offices, military, naval, and victualling stores, and the places where such stores are kept or deposited, either within this realm, or in any of the islands, countries, forts, or places thereunto belonging, is of great importance to the welfare and security of the kingdom;" it is enacted, "That if any person or persons shall, either within this realm, or in any of the islands, countries, forts, or places thereunto belonging, wilfully and maliciously set on fire, or burn, or otherwise destroy, or cause to be set on fire, or burnt, or otherwise destroyed, or aid, procure, abet, or assist in the setting on fire, or burning, or otherwise destroying of any of his majesty's ships or vessels of war, whether the said ships or vessels of war be on float or building, or begun to be built, in any of his majesty's dock-yards, or building or repairing by contract in any private yards, for the use of his majesty, or any of his majesty's arsenals, magazines, dock-yards, rope-yards, victualling offices, or any of the buildings erected therein, or belonging thereto; or any timber or materials there placed, for building, repairing, or fitting out of ships or vessels, or any of his majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places, where any such military, naval, or victualling stores, or other ammunition of war, is, are, or shall be kept, placed, or deposited; that then the person or persons guilty of any such offence, being thereof convicted in due form of law, shall be adjudged guilty of felony, and shall suffer death, as in cases of felony, without benefit of clergy." This offence is still capital. (*See* 7 & 8 Geo. IV. c. 28, ss. 6 and 7; 2 *Russ.* 554, *n.*)

Person offending out of this realm may be tried in any shire, if within this realm.

Sect. 2. "That any person who shall commit any of the offences before-mentioned, in any place out of this realm, may be indicted and tried for the same, either in any shire or county within this realm, in like manner and form as if such offence had been committed within the said shire or county, or in such island, country, or place, where such offence shall have been actually committed, as his majesty, his heirs, or successors, may deem most expedient for bringing such offender to justice; any law, usage, or custom notwithstanding."

Articles of navy.

By the articles of the navy, (22 Geo. III. c. 33, art. 25,) every person who shall unlawfully burn or set fire to any magazine or store of powder, or ship, boat, ketch, hoy, or vessel, or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, shall be punished with death by the sentence of a court-martial."

In London.

There is a local act of 39 Geo. III. c. lxix., imposing a punishment against setting fire to works, ships, &c. in the port of London.

VI. Offences as to the Registry, &c. of Ships; Evidence of, &c.

The acts in force relating to the registering of British vessels are the 3 & 4 Will. IV. c. 55, 5 & 6 Will. IV. c. 56, and 1 & 2 Vict. c. 113.

Persons detaining certificate of register to forfeit 100*l.*

The 3 & 4 Will. IV. c. 55, s. 27, reciting that "it is not proper that any person under any pretence whatever should detain the certificate of registry of any ship or vessel, or hold the same for any purpose other than the lawful use and navigation of the ship or vessel for which it was granted;" enacts, "That in case any person who shall have received or obtained by any means or for any purpose whatever the certificate of the registry of any ship or vessel (whether such person shall claim to be the master or to be the owner or one of the owners of such ship or vessel, or not) shall wilfully detain and refuse to deliver up the same to the proper officers of his majesty's customs, for the purposes of such ship or vessel, as occasion shall require, or to the person or persons having the actual com-

6. *The Registry Act, &c.*

3 & 4 Will. IV. c. 55.

mand, possession, and management of such ship or vessel as the ostensible and reputed master or as the ostensible and reputed owner or owners thereof, it may and shall be lawful to and for any such last-mentioned person to make complaint on oath of such detainer and refusal to any justice of the peace residing near to the place where such detainer and refusal shall be in Great Britain or Ireland, or to any member of the supreme court of justice or any justice of the peace in the islands of Jersey, Guernsey, or Man, or in any colony, plantation, island, or territory to his majesty belonging in Asia, Africa, or America, or in Malta, Gibraltar, or Heligoland, where such detainer and refusal shall be in any of the places last mentioned; and on such complaint the said justice or other magistrate shall and is hereby required, by warrant under his hand and seal, to cause the person so complained against to be brought before him to be examined touching such detainer and refusal; and if it shall appear to the said justice or other magistrate, on examination of such person or otherwise, that the said certificate of registry is not lost or mislaid, but is wilfully detained by the said person, such person shall be thereof convicted, and shall forfeit and pay the sum of 100*l.*, and on failure of payment thereof he shall be committed to the common gaol, there to remain without bail or mainprize for such time as the said justice or other magistrate shall in his discretion deem proper, not being less than three months nor more than twelve months; and the said justice or other magistrate shall and he is hereby required to certify the aforesaid detainer, refusal, and conviction to the person or persons who granted such certificate of registry for such ship or vessel, who shall, on the terms and conditions of law being complied with, make registry of such ship or vessel *de novo*, and grant a certificate thereof conformably to law, notifying on the back of such certificate the ground upon which the ship or vessel was so registered *de novo*; and if the person who shall have detained and refused to deliver up such certificate of registry as aforesaid, or shall be verily believed to have detained the same, shall have absconded, so that the said warrant of the justice or other magistrate cannot be executed upon him, and proof thereof shall be made to the satisfaction of the commissioners of his majesty's customs, it shall be lawful for the said commissioners to permit such ship or vessel to be registered *de novo*, or otherwise, in their discretion, to grant a licence for the present use of such ship or vessel in like manner as is hereinbefore provided in the case wherein the certificate of registry is lost or mislaid."

Justice to certify detainer, and ship to be registered *de novo*.

If person detaining certificate have absconded, ship may be registered as in case of lost certificate.

In *Bowen* v. *Fox*, (10 *B. & C.* 41; 5 *Man. & R.* 5; 4 *C. & P.* 452,) it was made a question, but not decided, whether a person holding the certificate of a ship's register, which had been deposited as a security for advances for the use of the ship, and refusing to deliver it up when demanded, is guilty of a *wilful* detention within the meaning of the now repealed act, 4 Geo. IV. c. 41, s. 25.

In *Rex* v. *Pixley*, (13 *East*, 91,) the conviction upon an enactment similar to that of 3 & 4 Will. IV. c. 55, s. 27, charged the defendant with unlawfully detaining and unlawfully refusing to deliver up a certificate of registry to the proper officer, on being required to deliver the same by the owner of the ship, and such conviction was held not to be supported by proof that the defendant withheld the certificate from a person sent by the owner with a letter requiring the defendant generally to deliver it in order that an indorsement might be made upon it at the Custom-house.

A conviction under the above enactment of 3 & 4 Will. IV. c. 55, s. 27, stated that the defendant refused to deliver up a certificate of registry to *his majesty's officers of customs*: Held, that this was bad, as not bringing the offence within the words of the section "shall refuse to deliver up to *the proper* officers of his majesty's customs."

The conviction did not state for what purpose the certificate was required: Held *per* Lord *Denman*, C. J., and *Williams*, J., that this omission also made the conviction bad, as not satisfying the words of the same section, "to deliver up for the purpose of such ship or vessel, as occasion shall

6. *The Registry Act, &c.*

3 & 4 Will. IV. c. 55.

require." Held, also, that these were defects in substance, and not cured by the general act, 5 Geo. IV. c. 23, s. 3. (*R.* v. *Walsh*, 1 *Adol. & Ell.* 481; 3 *Nev. & M.* 632, *S. C.*)

Copies of declarations, &c. and of extracts from books of registry admitted in evidence

Sect. 40. "'And whereas great inconvenience hath arisen from the registering officers being served with subpœnas requiring them to bring with them and produce, on trials in courts of law relative to the ownery of vessels, or otherwise, the oaths or declarations required to be taken by the owners thereof prior to the registering thereof, and the books of registry, or copies or extracts therefrom: And whereas it would tend much to the despatch of business if the attendance of such registering officers with the same upon such trials were dispensed with;' be it therefore enacted, That the collector and controller of his majesty's customs at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit for his, her, or their inspection and examination any oath or declaration sworn or made by any such owner or owners, proprietor or proprietors, and also any register or entry in any book or books of registry required by this act to be made or kept relative to any ship or vessel, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her, or them to take a copy or copies or an extract or extracts thereof respectively; and that the copy and copies of any such oath or declaration, registry or entry, shall, upon being proved to be a true copy or copies thereof respectively, be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any collector or controller, or other person or persons acting for them respectively, in all cases, as fully and to all intents and purposes as such original or originals, if produced by any collector or collectors, controller or controllers, or other person or persons acting for them, could or might legally be admitted or received in evidence."

It appears that it may often be necessary to prove that the affidavit made to obtain registry of a ship was actually made by the person therein named as a deponent, and consequently, it may sometimes happen that the production of a copy will be insufficient for the purpose intended, notwithstanding the above enactment; for the enactment makes the copy evidence in those cases only where the original, if produced, would be evidence—and the production of the original without proof of the signature would be ineffectual. (*Abbott, 7th ed.* 95; *Teed* v. *Martin*, 4 *Camp.* 90.) The register alone does not furnish even *primâ facie* evidence to *charge* a person as owner of a ship in a suit between private individuals. (*Frazer* v. *Hopkins*, 2 *Taunt.* 5, *Smith* v. *Fuge*, 3 *Camp.* 456; *Recusse* v. *Myers*, *Id.* 475; *and see Rands* v. *Thomas*, 5 *M. & Sel.* 244; *Tinkler* v. *Walpole*, 14 *East*, 226; *Flower* v. *Young*, 3 *Camp.* 240; *Pirie* v. *Anderson*, 4 *Taunt.* 652; *M'Iver* v. *Kemble*, 16 *East*, 169.)

Penalty of 500*l.* on persons making false declaration, or falsifying any document

Sect. 45. "If any person or persons shall falsely make declaration to any of the matters hereinbefore required to be verified by declaration, or if any person or persons shall counterfeit, erase, alter, or falsify any certificate or other instrument in writing required or directed to be obtained, granted, or produced by this act, or shall knowingly or wilfully make use of any certificate or other instrument so counterfeited, erased, altered, or falsified, or shall wilfully grant such certificate or other instrument in writing, knowing it to be false, such person or persons shall for every such offence forfeit the sum of 500*l.*"

How penalties are to be recovered,

Sect. 46. "All the penalties and forfeitures inflicted and incurred by this act shall and may be sued for, prosecuted, recovered, and disposed of in such manner, and by such ways, means, and methods, as any penalties or forfeitures inflicted or which may be incurred for any offences committed against any law relating to the customs may now legally be sued for, prosecuted, recovered, and disposed of;

and officers' shares.

and that the officer or officers concerned in seizures or prosecutions under this act shall be entitled to and receive the same share of the produce arising from

such seizures as in the case of seizures for unlawful importation, and to such share of the produce arising from any pecuniary fine or penalty for any offence against this act as any officer or officers is or are now by any law or regulation entitled to upon prosecutions for pecuniary penalties." (*See "Excise and Customs,"* Vol. II.)

6. *The Registry Act, &c.*

The 1 & 2 Vict. c. 113, s. 12, reciting that "it is expedient that true information should be had at every port in her majesty's dominions whether all the vessels registered at such port are actually in existence and entitled to the privileges of British registered ships, or not;" enacts, "That the person or persons registered as owner or owners of any British ship or vessel which shall have been lost, or taken by the enemy, or burnt, or broken up, or otherwise prevented from returning to the port to which such ship or vessel belongs, or which shall on any account have lost or forfeited the privileges of a British ship, shall immediately upon obtaining knowledge of any of the circumstances aforesaid give notice in writing of such circumstances to the collector or controller of the customs at the port of registry of such ship or vessel."

1 & 2 Vict. c. 113. Owners of British vessels to give notice to collectors of customs at the port of registry of the loss, &c. of such vessels;

Sect. 13. "And be it enacted, That in all cases where any British registered ship or vessel shall have been absent from the port of registry for the space of three years, the person or persons registered as the owner or owners of such ship or vessel shall in like manner give notice in writing to the collector or controller of the customs at such port, stating therein the cause of such absence, and that the said vessel has not forfeited her privileges as a British ship."

or if vessels absent from the port of registry for three years, to state cause.

Sect. 14. "And be it enacted, That every such owner or owners failing to give such notice in either of the cases aforesaid, or making any untrue statement in respect of any such ship or vessel, shall forfeit the sum of 5*l.*"

Failing to give such notices, &c. to forfeit 5*l.*

Information on 3 & 4 Will. IV. c. 55, s. 27, for detaining a certificate of registry.

Middlesex, to wit. } *Be it remembered, that on the day of , in the year of our Lord , at , in the county of , A. W., of , came before me, T. R., esq., one of her majesty's justices of the peace for the said county of , and residing near to the place where the detainer and refusal hereafter mentioned were made, and informed me, the said justice, upon oath, that he, the said A. W., together with D. W., on the day of instant, were, and still are, owners of a certain vessel called [" The Resolution,"] now in the port of London, and that P. S., of , then had in his custody and possession the certificate of the registry of the said vessel, and that they, the said A. W. and D. W., then were and still are desirous of transferring of their property in the said vessel, and of procuring an indorsement of such transfer, to be made on the said certificate by C. C., being the collector, and C. A., being the controller of the port of London, being the port where the said vessel is registered, and they being the proper officers of the customs in that behalf, for which purpose occasion then required and still requires, that the said certificate should be delivered up to the said collector and controller; and that the said A. W. did on the said day of instant, at , in the county aforesaid, for and on behalf of himself, and the said D. W., so being such owner of the said vessel as aforesaid, demand and require of the said P. S. to deliver up to them the said collector and controller, they then and there being the proper officers of the customs in that behalf, the said certificate of the registry of the said vessel, and which he then had in his custody as aforesaid, for the purpose of the said collector and controller indorsing thereon the said transfer of the said A. W. and D. W.'s property in the said vessel; but the said P. S., then and there wilfully and wrongfully detained and refused to deliver up the said certificate to the said collector and controller, for the said purpose aforesaid, on the occasion required as aforesaid, or for any other purpose whatever; and the said P. S. still wilfully retains the said certificate, contrary to the form of the statute in such case made and provided; and whereby the said P. S. hath according to the said statutes become liable to pay the sum of* 100*l.*, *and hereupon, &c.* [Conclude as usual; see the Form, *title "Conviction,"* Vol. I.]

7. *Regulations as to Passengers.*

VII. Regulations, &c. as to Passengers.

1. *In Ships between Great Britain and Ireland,* 1018.
2. *To Foreign Parts,* 1022.

1. In Ships between Great Britain and Ireland.

No captain of vessel under 200 tons to take more than twenty passengers, unless licensed by collector of customs at the port.

By the 4 Geo. IV. c. 88, s. 1, "It shall not be lawful for the master or commander, or person having the charge or command of any vessel employed in the conveyance of passengers between Great Britain and Ireland, being of any burthen less than two hundred tons, to have or take on board, or to carry or convey any greater number of persons than twenty as passengers from any port in Great Britain to any port in Ireland, or from any port in Ireland to any port in Great Britain, unless a licence for the conveyance of passengers shall have been previously granted to the owner or owners, or master or commander of such ship or vessel, under the hand of the collector, controller, or other chief officer of the customs, at the port from which such vessel shall sail from Great Britain to Ireland, and from Ireland to Great Britain respectively; and it shall be lawful for every such collector, controller, or other chief officer of the customs, to grant and sign such licence without fee or reward, in such form and under such regulations as shall be directed by the commissioners of customs: Provided always, that no such licence shall be granted by such collector, controller, or other chief officer, except upon such certificate as shall be required by the commissioners of the customs, that such vessel is seaworthy and properly formed in all respects; and every such licence shall remain in force for the space of one year from the date thereof, and no longer (*a*)."

No fee for licence.

Conditions.

Proportion of passengers to tonnage, including the crew.

Sect. 2. "It shall not be lawful for any master or other person having or taking the charge or command of any ship or vessel so licensed for the conveyance of passengers, which shall clear out from any port or place in the United Kingdom of Great Britain and Ireland, to have on board, at or after being cleared out, at any one time, or to convey, carry, or transport from any port or place in Great Britain or Ireland respectively, in any such ship or vessel, a greater number of persons (exclusive of the ordinary crew of such ship or vessel) than in the proportion of five adult persons, or of ten children under fourteen years of age, or of fifteen children under seven years of age, for every four tons of the burthen of such ship or vessel; and every such ship or vessel shall be deemed and taken to be of such tonnage or burthen as is or may be described and set forth in the respective certificate of the registry of each and every such ship or vessel, granted in pursuance of the several acts in force in Great Britain and Ireland respectively, relating to such certificates; and if any such ship or vessel shall be partly laden with goods, wares, or merchandize, or horses or carriages, then it shall not be lawful for the master or other person having the charge or command of such ship or vessel, to receive or take on board a greater number of persons (exclusive of the ordinary crew) than in the proportion of five adult persons, or of ten children under fourteen years of age, or of fifteen children under seven years of age, for every four tons of that part of such ship or vessel which shall remain unladen; and such goods, wares, or merchandize with which such ship or vessel may be partly laden, shall, at the sight and under the direction of the collector or controller or other officer of the customs, at the port or place

Tonnage according to certificate of registry.

If ship partly laden with goods, &c., tonnage for passengers to be exclusive of part laden.

(*a*) The 4 & 5 Will. IV. c. 89, s. 28, enacts, that every steam vessel, which is of the register tonnage of 140 tons or upwards, shall be deemed a vessel of 200 tons at least, for the purposes of the above statute of 4 Geo. IV.

where such goods, wares, or merchandize shall be taken on board, be stowed and disposed of in such manner as to leave good, sufficient, and wholesome accommodation for the proportion of persons hereby allowed in such case to be received on board."

7 *Regulations as to Passengers.*

4 Geo. IV. c. 88.

Sect. 3. "If any master or any person having the charge or command of any such ship or vessel shall take on board any passenger or passengers, or if the owner or owners of any such ship or vessel shall engage to take on board any passenger or passengers beyond the number of twenty as aforesaid, without such licence being previously obtained by such master, owner, or other person as by this act is required, every such master or other person, or owner or owners, shall for every offence forfeit the sum of 50*l.*; and if any master or other person having or taking the charge or command of any such ship or vessel, shall take on board, or if such master or other person, or the owner or owners of any such ship or vessel, shall engage to take on board a greater number of persons than in the proportion allowed by this act, such master or other person as aforesaid shall forfeit and pay the sum of 5*l.* for each and every or any such person, exceeding in number the proportion hereinbefore limited; and every such ship or vessel so having on board, or conveying or carrying any greater number than twenty persons without such licence as aforesaid first had and obtained, shall and may be seized and detained by the collector, controller, surveyor, or officer of the customs, until such penalty of 50*l.* shall be satisfied and paid."

Taking passengers without licence.

Taking more passengers than allowed.

Detention of ship till penalty paid.

Sect. 4. "It shall not in any case be lawful for any master or other person taking or having the charge or command of any trading or coasting ship or vessel, not being wholly employed in the conveyance of passengers, and not licensed to carry any passengers pursuant to this act, whether such ship or vessel shall be laden in part or in the whole with goods and merchandize not being the baggage of or belonging to any passengers in such ship or vessel, or shall be employed in the carriage or conveyance of cattle or pigs, or shall be in ballast, and which shall sail from any port or place in Great Britain to any port or place in Ireland, or from any port or place in Ireland to any port or place in Great Britain, to have or take on board a greater number of persons than ten (exclusive of the ordinary crew of such ship or vessel), if such ship or vessel shall be of the burthen of one hundred tons or under, nor a greater number of persons than twenty (exclusive of the ordinary crew), if such ship or vessel shall be of a burthen greater than one hundred tons, and not exceeding the burthen of two hundred tons; and if more persons shall be found or taken on board any such ship or vessel than in the proportion herein allowed, every such master or other person as aforesaid shall forfeit and pay the sum of 5*l.* for every person so taken on board beyond such proportion."

Merchant vessels, &c. of certain tonnage, carrying more persons than in proportion.

Sect. 5. "An abstract of this act shall be prepared and printed by and under the direction of the commissioners of his majesty's customs, and a printed copy of such abstract shall be hung up in the Custom-house of every port of the United Kingdom, and a printed copy of such abstract, and also a copy of the licence granted to the captain or owners of such ship or vessel, and a notice or statement of the number of persons allowed to be carried and conveyed in such vessel, shall be hung up and affixed in some conspicuous place on the deck and in the cabin of every ship or vessel carrying passengers under the regulations of this act; and the master or other person having or taking the charge or command of such ship or vessel shall cause the said copies to be kept and renewed, so that the same may be at all times accessible to every person on board such ship or vessel, upon pain that every such master or other person having or taking the charge or command of every such ship or vessel, in which such abstract, licence, and notice, or any of them, shall not be hung up or affixed, and shall not be renewed and remain as aforesaid, shall for every such offence forfeit the sum of 10*l.*"

Abstract of act hung up at Custom-house, and on board every vessel.

Sect. 6. "Nothing in this act contained shall extend or be deemed or

Not to extend to

7. *Regulations as to Passengers.*

construed to extend to ships or vessels in the service of his majesty, or of his majesty's postmaster-general, or of the commissioners of customs and excise, or of the East-India company; nor to any ship or vessel of the burthen of two hundred tons or upwards, nor to any ship or vessel employed in carrying troops."

8 Geo. IV. c. 88.

Vessels in service of government, &c.

Penalties, how recovered and applied.

Sect. 7. "All penalties and forfeitures for any offence against this act shall and may be recovered at any time within three calendar months after the commission of such offence, in a summary way, by the order and adjudication of any one justice of the peace for the county or place in which the port shall be situate, from which any such ship or vessel shall depart, or at which any such ship or vessel shall arrive, on complaint to such justice for that purpose exhibited; and such penalty shall be levied, as well as the costs of such proceedings, on nonpayment, by distress and sale of the goods and chattels of the offender or offenders, or person or persons liable to pay the same, by warrant under the hand and seal of such justice; and such justice is hereby authorized and required to summon before him any witness or witnesses, and to examine such witness or witnesses upon oath, of and concerning such offences, and to hear and determine the same; and the overplus (if any) of the money so levied or recovered, after discharging the penalty or forfeiture for which such warrant shall be issued, and the costs and expenses of recovering and levying the same, shall be returned upon demand to the owner or owners of the goods or chattels so seized or distrained; and in case such penalty or forfeiture shall not be forthwith paid upon conviction, then it shall be lawful for such justice to order the offender or offenders so convicted to be detained and kept in safe custody, until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justice, for his or their appearance before such justice on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justice is hereby empowered to take by way of recognizance or otherwise; but if, upon the return of such warrant, it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for such justice, or any other justice of the peace for such county or place as aforesaid, and he is hereby authorized and required, by warrant under his hand and seal, to cause such offender or offenders to be committed to the gaol of such county or place, there to remain, without bail or mainprize, for any term not exceeding two calendar months, unless such penalty or forfeiture, and all reasonable charges, shall be sooner paid and satisfied; and one moiety of every such penalty or forfeiture, when so levied, shall be paid to the person or persons who shall sue or prosecute for the same, for his or her own use and benefit, and the other moiety thereof to the use of his majesty, his heirs, and successors."

Distress.

Imprisonment.

Half to prosecutor, and half to king.

Appeal to quarter sessions.

Sect. 8. "If any person shall think himself or herself aggrieved by any conviction in pursuance of this act, it shall be lawful for such person to appeal to the justices of the peace at the next general quarter sessions of the peace to be holden for the county or place, such appellant (if there be sufficient time after the cause of such complaint shall have arisen) first giving or causing to be given ten days notice at least in writing of his or her intention of bringing such appeal, and of the matter thereof, to the justice whose conviction shall be so appealed against, and within seven days next after such notice entering into a recognizance before the said justice or some other justice of the peace for the county or place, with two sufficient sureties conditioned to try such appeal, and to abide the order of such justices at sessions thereon, and to pay such costs as shall be awarded by the justices at such quarter sessions; and for want of sufficient time for giving such notice previous to the quarter sessions next after the cause of such complaint shall have happened, then such appeal, after such notice and under such recognizance, may be made at the second general quarter sessions of the peace to be holden for such county

Notice.

Security for costs.

or place; and the justices at such first or second sessions, upon due proof of such notice having been given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of such appeal in a summary way, and shall award such costs to the parties appealing or appealed against, as they the said justices shall think proper, and the determination of such justices at such quarter sessions shall be final, binding, and conclusive to all intents and purposes; and the said justices at such sessions may also, by their warrant or order, cause such costs so awarded by distress and sale to be levied of the goods and chattels of the person or persons who shall refuse or neglect to pay the same; and for want of sufficient distress may commit such person or persons to the common gaol or house of correction for the said county, there to remain for any time not exceeding two calendar months, or until payment of such costs."

7. *Regulations as to Passengers.*

4 Geo. IV. c. 88.

Determination of justices final.

Distress.

Imprisonment.

Sect 9. "No proceedings against, nor any conviction of any offender or offenders against this act, or by or before any justice of the peace, shall be quashed for want of form, nor be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of his majesty's courts of record at Dublin; and where any distress shall be made for any sum or sums of money to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in any action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the party distraining before such action commenced."

Proceedings not to be quashed for want of form.

Sect. 10. "Any action or suit which shall be brought or commenced against any person or persons for any thing done in pursuance and by the authority of this act, shall be commenced within three calendar months next after the fact committed, and not afterwards, and shall be brought in the county, city, or place, where the cause of action shall arise, and not elsewhere; and that the defendant or defendants in such action or suit to be brought may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear to be so done, or if any such action or suit shall be brought after the time before limited for bringing the same, or shall be brought in any county, city, or place other than as aforesaid, then and in every such case the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or shall discontinue his, her, or their action, or if a verdict shall pass against the plaintiff, or if upon demurrer judgment shall be given against such plaintiff or plaintiffs, the defendant or defendants shall and may recover double costs, and have the like remedy for the same as any defendant or defendants hath or have for costs of suit in other cases by law." (See now as to double costs, the 5 & 6 Vict. c. 97, ss. 1, 2; *title "Justices,"* Vol. III.)

Tender of amends.

Limitation of actions.

General issue.

Double costs.

State the offence thus:] *That C. D., late of, &c., within the space of three calendar months now last past, to wit, on, &c., at, &c., being then and there the [master, and a person having the charge and command], of a certain ship and vessel called , then and there employed in the conveyance of passengers between Great Britain and Ireland, being of less than two hundred tons burthen, to wit, of the burthen of one hundred tons, did unlawfully have and take on board, carry and convey a greater number of passengers than twenty, to wit [fifty] persons, as passengers, in and by the said ship and vessel, from a certain port in England, called , to a certain port in Ireland, called ; no licence for the conveyance of passengers having been then previously granted to the*

Information, &c. on 4 Geo. IV. c. 88, s. 1, against master of ship under 200 tons, for carrying more than twenty passengers between Great Britain and Ireland, without licence.

7. Regulations as to Passengers.

owner, or master, or commander of the said ship and vessel, according to the directions of the statute in that behalf made and provided; contrary to the form of the statute in such case made and provided. Whereby, &c. [Conclude as usual.]

---

2. In Ships to Foreign Parts.

Repeal of acts.

The 5 & 6 Vict. c. 107, entitled "An Act for regulating the Carriage of Passengers in Merchant Vessels," [12th August, 1842,] reciting that it is expedient to make provision respecting the carriage of passengers by sea in certain cases, and for that purpose to repeal, except as hereinafter is mentioned, the 5 & 6 Will. IV. c. 53, and 3 & 4 Vict. c. 21, and 1 & 2 Vict. c. 113, s. 26 (an act relating to the customs), repeals the same except as to the repeal of 9 Geo. IV. c. 21.

Limitation of numbers of passengers according to tonnage and space.

Sect. 2. "That no ship carrying passengers on any voyage from any port or place in the United Kingdom, or in the islands of Guernsey, Jersey, Alderney, Sark, or Man, hereinafter designated as the hereinbefore mentioned islands, to or for any port or place out of Europe, and not being within the Mediterranean sea, shall proceed on her voyage with or shall carry more persons on board than in the proportion of three persons to every five tons of the registered burden of such ship, the master and crew being included in and forming part of such prescribed number, and that no such ship shall, whatever be the tonnage thereof, proceed on her voyage with or carry more passengers on board than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores not being the personal luggage of passengers; (that is to say,) on the lower deck or platform one passenger for every ten such clear superficial feet, if such ship is not to pass within the tropics during such voyage, but if such ship is to pass within the tropics during such voyage, then one passenger for every twelve such clear superficial feet, if such voyage is computed in manner hereinafter mentioned, not to exceed twelve weeks, and one passenger for every fifteen such clear superficial feet if such voyage is so computed to exceed twelve weeks; and under the poop and on the orlop deck, if any, one passenger for every thirty such superficial feet in all cases; and that if any ship carrying passengers upon any such voyage as aforesaid shall carry any passengers beyond the proportions hereinbefore respectively mentioned, or any of them, the master of such ship shall, for or in respect of every passenger constituting such excess, be liable, on such conviction as hereinafter is mentioned, to the payment of a penalty not exceeding 5*l.*, to be sued for and recovered as hereinafter is mentioned."

Construction and thickness of lower deck.

Sect. 3. "That no ship shall carry passengers on any such voyage as aforesaid unless she have lower or hold beams forming part of the permanent structure of the vessel, and also a lower deck or platform, of which the under surface shall be not lower than three inches above the bottom of the lower beams, and properly and substantially secured to the same, nor unless such lower deck or platform shall be of not less than one and a half inch in thickness."

Height between decks.

Sect. 4. "That no ship shall carry any passengers upon any such voyage as aforesaid unless such ship shall be of the height of six feet at the least between the upper deck and the lower deck or platform hereinbefore mentioned, nor carry passengers on the orlop deck, if any, unless the height between such orlop deck and the deck immediately above the same be six feet at the least."

Sleeping berths.

Sect. 5. "That no ship carrying passengers on any such voyage as aforesaid shall have more than two tiers of berths, and that in no such ship shall the interval between the floor of the berths and the deck or platform beneath them be less than six inches; and further, that the berths shall be securely constructed, and that their dimensions shall not be less than after the rate of six feet in length and eighteen inches in width for each passenger."

Sect. 6. "That on board every ship carrying passengers on any such voyage as aforesaid there shall be issued to the passengers daily a supply of water at the rate of at least three quarts for each passenger per day, and that there shall also be issued at convenient times, not less often than twice a week, a supply of provisions after the rate of seven pounds of bread, biscuit, flour, oatmeal, or rice per week, provided that one half at least of the supply shall consist of bread or biscuit, and that potatoes may be employed to the extent of the remaining half of the supply, five pounds, however, of potatoes being computed as equal to one pound of the other articles above enumerated; and that such issues as aforesaid shall be made throughout the whole voyage, including the time of detention, if any, at any port or place before the end of such voyage; and further, that no ship proceeding on any such voyage as aforesaid shall be cleared out until there shall be laden and on board such quantity of pure water, and of good and wholesome provisions of the requisite kind, as shall be sufficient to allow of the issues aforesaid during the period assigned to such voyage under the provisions of this act."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

Quantities of provisions and water to be issued to each passenger.

Sect. 7. "That in any such ship the water to be laden on board as hereinbefore required shall be carried in tanks or sweet casks, and that none of such casks shall exceed three hundred gallons in capacity; and further, that when any ship shall be destined to call at a port or place in the course of her voyage for the purpose of filling up her water, a supply of water at the rate before mentioned for every week of the computed voyage to such port or place of calling shall be deemed to be a compliance with the provisions of this act, subject to the following conditions; (that is to say,)

Further regulations as to water.

First, That the government emigration agent at ports where there is one, and the collector or comptroller of customs at ports where there is no such agent, signify his approval, in writing, and that the same be carried amongst the papers of the ship, to be delivered to the collector of customs or her majesty's consul, as the case may be, on reaching her final destination:

Secondly, That an engagement to call at such port or place be inserted in the bond which is hereinafter required to be given to the crown by the owner or charterer and master:

Thirdly, That if the computed length of voyage to such port or place be not declared in this act, it shall be competent to the government emigration agent, or the collector or comptroller of customs, as aforesaid, as the case may be, to fix the same in each case; and,

Fourthly, That the ship shall have on board, at the time of clearing out, tanks or water casks sufficient for stowing the quantity of water required for the longest portion of the whole voyage."

Sect. 8. "That the number of weeks deemed to be necessary for the voyage of any such ship, according to her destination, shall be determined by the following rule of computation; (that is to say,)

Computed length of different voyages.

For a voyage to North America, except the west coast thereof, ten weeks:

For a voyage to the West Indies, including under that term the Bahama Islands and British Guiana, ten weeks:

For a voyage to any part of the continent of Central or South America, except the west coast thereof, and except British Guiana, twelve weeks:

For a voyage to the west coast of Africa, twelve weeks:

For a voyage to the Cape of Good Hope or the Falkland Islands, fifteen weeks:

For a voyage to the Mauritius, eighteen weeks:

For a voyage to Western Australia, twenty weeks:

For a voyage to any other of the Australian Colonies, twenty-two weeks:

For a voyage to New Zealand, twenty-four weeks."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

How children are to be computed in the enumeration of passengers.

Government emigration agents or officers of customs to survey provisions and water.

Sect. 9 provides and enacts, "That for the purposes and within the meaning of this act it shall in all cases be computed that two children, each being under the age of fourteen years, shall be equal to one passenger, and that children under the age of one year shall not be included in the computation of the number of passengers."

Sect. 10. "That before any such ship shall be cleared out for the voyage the government emigration agent, at ports where there is such an officer, or in the absence of such agent, and in ports where there is no such agent, the collector or comptrollers of customs, shall survey or cause to be surveyed by some competent person the provisions and water hereinbefore required for the consumption of the passengers, and shall ascertain that the same are in a sweet and good condition, and shall also ascertain that over and above the same there is on board an ample supply of water and stores for the victualling of the crew of the ship and other persons (if any) on board.

The same officers to attend generally to enforcement of the act.

Sect. 11. "That such officers shall see that the other directions contained in this act be complied with, so far as the same can be complied with, before the departure of such ship from any port or place in the United Kingdom or in the hereinbefore mentioned islands."

Seaworthiness of the ship may be ascertained by survey.

Sect. 12. "That if doubts shall arise whether any ship about to proceed with passengers as aforesaid is seaworthy, so as to be fit for her intended voyage, and such doubts shall not be removed to the satisfaction of the collector and comptroller of the customs at the port from which such vessel is to be cleared out, or in case there shall be a government emigration agent at such port, then to the satisfaction of such emigration agent, it shall be lawful for such collector and comptroller, or for such government emigration agent, (as the case may be,) at any time to cause such ship to be surveyed by two competent persons, and if it shall be reported by those persons that such ship is not in their opinion seaworthy with reference to such voyage, such ship shall not be cleared out, unless the contents of such report be disproved to the satisfaction of the commissioners of the customs, or of the colonial land and emigration commissioners in those cases in which the report shall have been made at the instance of a government emigration agent, or until such ship shall have been rendered seaworthy."

Sufficient boats to be carried.

Sect. 13. "That no ship shall carry any passengers on any such voyage as aforesaid unless such ship shall be provided with good sound boats of suitable size, and properly supplied with all requisites for their use, in the following proportion to the registered tonnage of such ship as aforesaid; (that is to say,)

Two boats, if the tonnage of such ship be one hundred and fifty tons and upwards, but under two hundred and fifty tons:

Three boats, if the tonnage of such ship be two hundred and fifty tons and upwards:

Four boats, if the tonnage of such ship be five hundred tons and upwards, and the number of passengers exceed two hundred:

Nor unless one of such boats be a long boat of a size duly proportioned to the tonnage of the ship."

opies of the act to be kept on board, and produced if demanded.

Sect. 14. "That two copies of this act shall be kept on board every ship carrying passengers on any such voyage as aforesaid, and that for this purpose two copies of the same, provided and issued by the authority of the commissioners of the customs, shall be delivered to the master, on demand, by the collector or comptroller of the customs at the port and time of clearance of the ship; and one of such copies shall, upon request made at seasonable times to the master of the ship, be produced to any passenger for his perusal."

In every ship (except to North America) carrying 100 passengers, or 50 passengers if

Sect. 15. "That no ship carrying passengers on any such voyage as aforesaid to any such port or place as aforesaid, except any port or place in North America, shall, in case the number of such passengers shall amount to or exceed one hundred, or in case the estimated length of the

voyage, computed as hereinbefore is mentioned, shall exceed twelve weeks, and the number of such passengers shall amount to or exceed fifty, clear out for such voyage from any port in the United Kingdom or in the hereinbefore mentioned islands, unless there shall be rated upon the ship's company and shall be actually serving on board such ship, some person duly authorized by law to practise in this kingdom as a physician or surgeon or apothecary, and that no such ship shall actually put to sea or proceed on such voyage unless such medical practitioner shall be therein, and shall *bonâ fide* proceed on such voyage, taking with him a medicine chest, and a proper supply of medicines, instruments, and other things suitable to the intended voyage; and no ship carrying passengers on any voyage from any port or place in the United Kingdom or in the hereinbefore mentioned islands, to or for any port or place out of Europe, and not being within the Mediterranean sea, shall clear out for any such voyage unless and until there shall be actually laden and on board such ship medicines, and printed or written directions for the use of the same, and other things necessary for the medical treatment of the passengers on board during such intended voyage, and available for that purpose, nor unless such medicines and other things shall be adequate in amount and kind to the probable exigencies of any such voyage, and, together with such medicines and other things, shall also be put on board every such ship previously to her clearing out for any such voyage as aforesaid a certificate under the hands of any one or more such medical practitioner, qualified as aforesaid, who shall not have been the seller of the medicines and other things, or any part of them, to the effect that the same have been inspected by him, and are in his judgment adequate to meet any such probable exigencies as aforesaid, and further, that he has no pecuniary interest in the supply of the same."

7. Regulations as to Passengers.

5 & 6 Vict. c. 107.

the voyage be longer than twelve weeks, a medical practitioner and medicines to be carried, and in every other ship a proper supply of medicines.

Sect. 16. "That in any ship carrying passengers upon any such voyage as aforesaid no spirits or strong waters shall be sold to any passenger during the voyage; and that if the master of the ship shall, directly or indirectly, sell or cause to be sold any spirits or strong waters to any passenger during the voyage, he shall be liable to a penalty not exceeding 100*l.*, to be sued for and recovered in manner hereinafter mentioned."

Sale of spirits to passengers prohibited.

Sect. 17. "That the master of every ship carrying passengers on any such voyage as aforesaid shall, before clearing out his said ship for such voyage from any port or place in the United Kingdom or in the hereinbefore mentioned islands, sign and deliver, in duplicate, to the collector, or to such officer of her majesty's customs at such port or place as may clear the ship, a list, made out according to the form contained in schedule (A.) hereto annexed, of all and every the passengers on board of such ship, specifying, as accurately as may be, all the particulars in the said form required, and such collector or other officer shall thereupon countersign and return to the said master one of such duplicate lists; and the said master shall exhibit such duplicate list with the additions, if any, to be made thereto, as hereinafter directed, to the collector or other chief officer of her majesty's customs at any port or place in her majesty's possessions, or to her majesty's consul at any foreign port at which the said passengers or any of them shall be landed, and shall deposit the same with such collector or chief officer of customs, or such consul, as the case may be, at his final port of discharge."

List of passengers to be delivered before clearing.

Sect. 18. "That in case any such vessel shall have cleared out as aforesaid with a number of passengers less than the number she could lawfully carry under the provisions of this act, or in case any passenger or passengers named in the list aforementioned shall not proceed on the voyage, and there shall afterwards be taken on board any additional passenger or passengers, the master shall in every such case add tot he first list so countersigned and returned to him as aforesaid, and in the same manner as is required in such first list, the names and particulars of such additional passenger or passengers; and shall moreover prepare, in the

Lists of additional passengers after clearing out.

7. Regulations as to Passengers.

5 & 6 Vict. c. 107.

form aforesaid, a separate list of such additional passenger or passengers, and deliver the same, together with the said first list so added to as aforesaid, both being duly signed by him, to the collector or other officer of customs as aforesaid at the port or place where any such additional passenger or passengers may have embarked, and thereupon such collector or other officer of customs shall countersign the additions so made to such first list as aforesaid, and shall return the same to the said master, and retain the separate additional list, and so on in like manner whenever any additional passenger or passengers may be taken on board: Provided always, that in the event of there being no collector or other officer of customs stationed at any port or place where such additional passenger or passengers may be taken on board, then such separate list, and also the said first list, with the additions so to be made to it as aforesaid, shall, in case the vessel shall subsequently touch at any port or place at which there shall be stationed any officer of her majesty's customs, be delivered by the said master to such officer of customs, and the same respectively shall be dealt with in all respects by such officer of customs as it would have been dealt with by the collector or other officer of customs as aforesaid had there been one at the port or place where such additional passenger or passengers embarked."

Written receipts to be given in respect of passengers to North America.

Sect. 19. "That if any owner, charterer, or master of a ship, or any passage broker, agent, or other person, shall receive any money from any person, for or in respect of the conveyance of any person as a passenger on any such voyage as aforesaid to any port or place in North America, the person so receiving such money shall give a written acknowledgment for the same to the party from whom the same shall have been received, in the form contained in the schedule (B.) hereto annexed, and in default thereof shall be liable to a penalty not exceeding 10*l.* in respect of each such passenger, to be sued for and recovered as hereinafter is mentioned, and if he shall be so licensed as hereinafter is mentioned, his licence shall be forfeited, in case the justices before whom the penalty shall be sued for shall declare the forfeiture thereof."

Licences to be taken out by dealers and brokers in respect of passages to North America.

Sect. 20. "That from and after the commencement of this act no person, not being the owner or master of the ship in which such passages as are hereinafter mentioned shall be taken, shall carry on the business of a passage broker or passage dealer in respect of passages from the United Kingdom or the hereinbefore mentioned islands to any port or place in North America, or shall sell or let, or agree to sell or let, to any person, any such passage, unless he shall have previously taken out a licence to carry on the business of a passage broker or passage dealer as hereinafter is mentioned, and unless such licence shall continue in force; and if any person shall carry on such business, or sell or let, or agree to sell or let, any such passage, contrary to this enactment, every person so offending shall be liable to a penalty not exceeding 10*l.* in respect of each and every such offence, to be sued for and recovered as hereinafter is mentioned, and shall further be subject to all the same penalties and liabilities to which licensed passage brokers and passage dealers are subject under this act; and that it shall be lawful for any person desiring to carry on the business of a passage broker or passage dealer, in respect of such passages to North America as aforesaid, to make application to the justices assembled in petty or quarter sessions held for the district or place in which such person shall reside, for a licence to carry on such business, and such justices so assembled are hereby authorized to grant such licence to the party making application for the same, such licence to be made out according to the form contained in the schedule (C.) hereunto annexed, and to continue in force for the period named in such form, unless sooner forfeited in manner hereinafter mentioned; and where any such licence shall be granted such justices shall cause notice thereof to be forthwith transmitted by the post to the colonial land and emigration commissioners at their office in London: Provided nevertheless, that no such licence shall be granted unless the party applying for the same shall

Licences to be granted by justices, and notice thereof transmitted to colonial land and emigration commissioners.

Notice to be given to colonial

show to the satisfaction of the justices that he has given notice to the colonial land and emigration commissioners of his intention to apply for the same twenty-one clear days at least before such application, such notice to be transmitted by the post to the office of the said colonial land and emigration commissioners, and to be in the form contained in the said schedule (D.) hereunto annexed."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

Land and emigration commissioners of intended application for licences.

Sect. 21. "That if any licensed broker or dealer as aforesaid shall receive money for or on account of the passage of any passenger for any such voyage as aforesaid to any port or place in North America, without having a written authority to act as agent for the party on whose behalf the contract for such passage purports to be made, or shall by any fraud or false pretence whatsoever induce any person to purchase, hire, or engage a passage in any ship for any such voyage as aforesaid, every such broker or dealer shall be liable, upon conviction, and as hereinafter is mentioned, in respect of every such offence, to a penalty not exceeding 10*l.*, to be sued for and recovered in manner hereinafter mentioned; and it shall be lawful for the justices before whom the penalty shall be sued for to declare, if they shall think fit, the licence of such broker or dealer to be forfeited, and the same shall upon such declaration be forfeited accordingly: Provided always, that in any case in which under the provisions of this act any justices shall declare the licence of any passage broker or passage dealer to be forfeited, such justices shall cause notice of such forfeiture in the form contained in the schedule (E.) hereunto annexed, to be forthwith transmitted by the post to the colonial land and emigration commissioners, at their office in London."

Penalties for acting without written authority from principals, and for obtaining passage money fraudulently.

Return of passage money and compensation to passengers, in certain cases.

Sect. 22. "That if any passenger or person on his behalf shall have entered into a contract for a passage or passages for such passenger, or for him and his family, in any ship, for any such voyage as aforesaid, from any port in the United Kingdom or in the hereinbefore mentioned islands, to or for any port or place out of Europe, and not being in the Mediterranean sea, and if such passenger, or such passenger and his family (as the case may be), shall be at the place of embarkation at the time appointed for that purpose in and by such contract, and such passenger shall apply for such passage or passages, and shall, on demand, pay or tender such part of the passage money not already paid as shall be payable under such contract previously to embarkation, and if, owing to the previous departure of the ship in which such passage or passages shall have been engaged, or the neglect, refusal, or other default of the owner, charterer, or master thereof, or of the party with whom such passage or passages shall have been contracted for, such passenger shall not obtain such passage or passages, or shall not within a reasonable time obtain a passage or passages by some other equally eligible vessel to the same port or place, and in the meantime be paid subsistence money, or be provided with lodging and maintenance, as hereinafter mentioned, such passenger shall be entitled to recover, in manner hereinafter provided, all monies which he shall have paid for such passage or passages, from the party to whom he shall have paid the same, or from the owner or charterer of the ship for whom such party shall be the agent, and also such further sum not exceeding 10*l.* in respect of each such passage as shall, in the opinion of the justices who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to such passenger or his family by the loss of such passage or passages."

Subsistence in case of detention.

Sect. 23. "That if any ship shall not actually put to sea, and proceed upon any such intended voyage as aforesaid, on the day for that purpose appointed in and by any contract made by the owner, master, or charterer of such ship, or by their agent, with any passenger who shall on that day be on board the same, or ready to proceed on such intended voyage, then and in every such case the master of such ship shall victual each and every such passenger in like manner as if the voyage had commenced, and if the ship does not put to sea after the interval of two clear working days

7. Regulations as to Passengers.

5 & 6 Vict. c. 107.

from the day appointed for sailing, shall be liable to pay to each and every such passenger, instead of victualling him, subsistence money, after the rate of 1*s.* in respect of each day of delay, until the actual clearing out and final departure of such ship on such voyage, and the same may be recovered in manner hereinafter mentioned: Provided, however, that such subsistence money shall not be payable in lieu of victualling in respect of any unavoidable detention by wind or weather, and also shall not be payable to any passenger who shall, with his own consent, be suitably lodged and maintained on shore at the expence of the parties who are bound to provide him with a passage."

Passengers not to be landed without their consent at any other place.

Sect. 24. "That the master of any ship carrying passengers under the provisions of this act shall not land or put on shore, or cause to be landed or put on shore, any passenger, without his previous consent, at any port or place other than the port or place at which he may have contracted to land or put such passenger on shore."

Passengers to be maintained for forty-eight hours after their arrival.

Sect. 25. "That at the close of any such voyage as aforesaid every person arriving as a passenger at any port or place shall, during the space of forty-eight hours next after such arrival, be entitled to continue on board such ship, and to be provided for and maintained on board the same, in such and the same manner as during such voyage, unless in the ulterior prosecution of her voyage any such ship shall quit any such port or place within the said period of forty-eight hours."

Facilities to be given to the proper officers for inspection of ship, &c

Sect. 26. "That the master of every ship carrying passengers on any such voyage as aforesaid shall afford to the government agent for emigration, or to the proper officer of customs at any port or place in her majesty's dominions from which such ship shall sail, or at which such ship shall touch during the voyage, or at which such ship shall arrive at the end of such voyage, and to her majesty's consul at any port or place at which such ship shall arrive, being in a foreign country, every facility for the inspection of the ship, and for communication with the passengers, and for ascertaining that the act has been duly observed."

Penalties.

Sect. 27. "That if in any ship carrying passengers on any such voyage as aforesaid such lower deck or platform of such thickness as hereinbefore directed shall not be laid and continued throughout the whole duration of any such voyage in such manner as is hereinbefore required; or if the height between such lower deck or platform and the upper deck shall be less than six feet; or if there shall be more than two tiers of berths; or if such berths shall not be securely constructed, or shall not be of the dimensions hereinbefore required; or if there shall not be throughout the whole duration of any such voyage such an interval as is hereinbefore prescribed between the deck and the floor of the berths; or if any such ship shall clear out and put to sea not having on board tanks or sweet casks of such size and number as aforesaid, and such water and provisions as aforesaid, for the use and consumption of the said passengers, of the kind and to the amount and in the proportion hereinbefore required; or if such water and provisions shall not be issued in manner hereinbefore required; or if such ship shall not be provided with good boats according to the rates aforesaid; or if copies of this act shall not have been kept on board and produced on demand as hereinbefore required; or if there shall not be on board any such vessel such medical practitioner as aforesaid, or such medicines and other things necessary to the medical treatment of the passengers as is hereinbefore required; or if any such ship shall be cleared out before such list of passengers as hereinbefore mentioned shall have been delivered in manner and form aforesaid to such officer as aforesaid; or if the additions to such list and such additional separate list or lists as aforesaid be not made in the cases aforesaid, and delivered in the cases in which they are hereinbefore required to be delivered; or if any such list, or the additions to the same, shall be wilfully false; or if any such list, including the additions, if any, to the same, shall not be exhibited to or deposited with the proper officer at any port or place at which it is hereinbefore required to be exhibited or deposited; or if any

passenger shall, without his previous consent, be put on shore at any place other than the place at which the master had contracted to land such passenger; or if any passenger shall not be allowed to continue on board such ship in manner hereinbefore provided; or if every such facility for inspection shall not be afforded as is hereinbefore required; the master of any such ship shall for and in respect of each and every such offence be liable, on such summary conviction as hereinafter mentioned, to the payment of a fine not exceeding 50*l.* sterling British money."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

Sect. 28 provides and enacts, 'That nothing herein contained shall take away or abridge any right of suit or action which may accrue to any passenger in any such ship, or to any other person, in respect of the breach or nonperformance of any contract made or entered into between or on behalf of any such passenger or other person, and the master, owner or owners, of any such ship."

The right of action of passengers not to be taken away or abridged

Sect. 29. "That all penalties imposed by this act for any offence against the same may be sued for and recovered to the use of her majesty as hereinafter is mentioned; (that is to say,) in the United Kingdom by any government emigration agent, or any collector or comptroller of her majesty's customs, or by any other officer of her majesty's customs authorized in writing by the commissioners of her majesty's customs to sue for penalties under this act; and in any of her majesty's possessions abroad, by any such government agent, collector, or comptroller, or other officer so authorized as aforesaid, and also by any officer authorized to sue for penalties under this act, by writing under the hand and seal of the governor or officer administering the government of any such possession; which respective authorities the commissioners of her majesty's customs and such governors or other officers are hereby empowered to grant; and all sums of money made recoverable by this act as return of passage money, subsistence money, or compensation, may be sued for and recovered, as hereinafter is mentioned, by or to the use of any passenger entitled thereto under this act, or by any of such officers as aforesaid, on behalf and to the use of any such passenger, or on behalf and to the respective use of any number of such passengers, and either by one or several complaints; and all such penalties and sums of money may be sued for and recovered before any two or more justices of the peace acting in any part of her majesty's dominions in which the offence shall have been committed or the cause of complaint shall have arisen, or in which the offender or party complained against shall happen to be; and upon complaint being made before any one justice of the peace as aforesaid he shall issue a summons requiring the party offending or complained against to appear on a day and at an hour and place to be named in such summons; and every such summons shall be served on the party offending or complained against, or shall be left at his last house, place of residence or of business, or on board any ship to which he may belong; and either upon the appearance or default to appear by the party offending or complained against it shall be lawful for any two or more justices to proceed summarily upon the case, and either with or without any written information; and upon proof of the offence or of the complainant's claim (as the case may be), either by confession of the party offending or complained against, or upon the oath of one or more credible witness or witnesses (which oath such justices are hereby authorized to administer), it shall be lawful for such justices to convict the offender or adjudicate the complaint, and upon such conviction or adjudication to order the offender or party complained against to pay such penalty, within the limits hereinbefore expressed, as the justices may declare to have been incurred, or (as the case may be) to pay to the party suing for the same the sum of money sued for, or so much thereof as such justices shall think the complainant justly entitled to, and also to pay the costs attending the information or complaint, summons, conviction, or adjudication; and if forthwith upon any such order the monies thereby ordered to be paid be

Recovery of penalties.

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

not paid, the same may be levied, together with the costs of the distress and sale, by distress and sale of the goods and chattels of the party ordered to pay such monies, the surplus, if any, to be returned to him, upon demand; and any such justices may issue their warrant accordingly, and may also order such party to be detained and kept in safe custody until return can conveniently be made to such warrant of distress, unless such party give sufficient security, to the satisfaction of such justices, for his appearance before them on the day appointed for such return, such day or days not being more than eight days from the time of taking such security; but if it shall appear to such justices, by the admission of such party or otherwise, that no sufficient distress can be had whereon to levy the monies so adjudged to be paid, they may, if they think fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justices, or any two or more such justices, as aforesaid, then such justices shall by warrant cause the party ordered to pay such monies and costs as aforesaid to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such monies and costs ordered to be paid, and such costs of distress and sale as aforesaid, be sooner paid and satisfied."

Vivâ voce evidence may be given of a party being a government agent or officer.

Sect. 30. "That if in any proceeding before any justice or justices under this act, or upon any action, suit, or other proceeding whatsoever against any person or persons for any thing done either contrary to or in pursuance of this act, a question should arise whether any person is a government emigration agent, or an officer of the customs, *vivâ voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence."

Passengers suing not incompetent witnesses.

Sect. 31. "That any passenger suing, as hereinbefore is mentioned, for any sum of money made recoverable by this act as return of passage money, subsistence money, or compensation, shall not be deemed an incompetent witness in any proceeding for the recovery thereof, notwithstanding the same, if recovered, shall be applicable to his own use and benefit."

Distress not to be unlawful for informality.

Sect. 32. "That where any distress shall be made for any penalty, monies, or costs to be levied by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case."

Tender of amends.

Sect. 33. "That no plaintiff shall recover in any action against any person for any thing done in pursuance of this act if tender of sufficient amends shall have been made before such action brought, or if, after action brought, a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant."

Limitation of actions.

Sect 34. "That no action or suit shall be commenced against any person for any thing done in pursuance of or under the authority of this act until twenty-one days notice has been given thereof in writing to the party or person against whom such action or suit is intended to be brought, nor after three calendar months next after the act committed for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other place; and the defendant in such action or suit may plead the general issue, and give this act and any special matter in evidence at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this act, or if it shall appear that such action or suit was brought before twenty-one days notice thereof given as aforesaid, or if any action or suit shall not

be commenced within the time hereinbefore limited, or shall be brought of land in any other place than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuited, or suffer a discontinuance of such action, or if upon any demurrer in such action judgment shall be given for the defendant thereon, then and in any of the cases aforesaid such defendant shall and may recover treble costs, and shall have such remedy for recovering the same as any defendant may have for his costs in any other case by law" (But see as to the notice of action and costs. the 5 & 6 Vict. c. 97, *title "Justices,"* Vol. III.)

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

Defendant may plead the general issue, &c.

Costs.

Sect. 35. "And for the more effectually securing the observance of the aforesaid rules, and the payment of the penalties," it is enacted, "That before any ship carrying passengers, if the number of such passengers shall exceed fifty, shall clear out for any such voyage as aforesaid from any port or place in the United Kingdom or in the hereinbefore mentioned islands, the owner or charterer, or in the event of the absence of such owner or charterer, one good and sufficient person on his behalf, to be approved by the collector or chief officer of customs at such port, and the master of the said ship, shall enter into a joint and several bond to her majesty, her heirs and successors, in the sum of 1000*l.*, the condition of which bond shall be that the said ship is seaworthy, and that all and every the rules and regulations made and prescribed by this act for the carriage of passengers shall be well and truly performed before and during such intended voyage, and that all penalties, fines, and forfeitures which the master of such ship may be sentenced or adjudged to pay for or in respect of the breach or nonperformance, before or during such voyage, of any such rules and regulations, shall be well and truly paid: Provided always, that such bond shall be without stamps; and that no such bond shall be put in suit, and that no prosecution, suit, action, information, or complaint shall be brought under or by virtue of this act, or upon or by reason of the breach of any of the provisions thereof, in any of her majesty's possessions abroad, after the expiration of twelve calendar months next succeeding the commencement of any such voyage as aforesaid, nor in the United Kingdom, or any of the islands before mentioned, after the expiration of twelve calendar months next after the return of the said ship or of the said master to the United Kingdom or the hereinbefore mentioned islands."

Owners or charterers and masters of vessels to enter into bond (without stamp) for the due performance of the regulations prescribed by this act.

Limitation of prosecutions.

Sect. 36. "That nothing in this act contained shall extend or be construed to extend to ships carrying passengers on such voyage as aforesaid if the number of such passengers shall not amount to or exceed thirty, nor shall any thing in this act contained extend to any of her majesty's ships of war, or to any ship in the service of the commissioners for executing the office of lord high admiral of the United Kingdom, or to ships of war or transports in the service of the East India company."

Exception of particular kinds of ships.

Sect. 37. "And whereas it is expedient to provide in certain cases for the regulation of voyages from the colonies:" it is therefore enacted, "That this act shall, except as hereinafter is excepted, extend and apply to the carriage of passengers by sea from any of the British West Indies, in which term are included the British West India islands, the Bahamas, and British Guiana, and from Malta, and from the British possessions in Africa, and from the Mauritius, to any other place whatsoever."

Extension of act to West Indies, Western Africa, Malta, and Mauritius.

Sect. 38. "That it shall be lawful for the governor or officer administering the government of any British colony not enumerated in the enactment lastly hereinbefore contained to declare by proclamation, to be issued for that purpose, that this act, except as hereinafter is excepted, shall be extended and shall apply to the carriage of passengers by sea from such colony to such places as may by him be named for the purpose in such proclamation, and thereupon this act shall be thenceforth so extended and shall so apply accordingly."

Power to governors of other colonies to adopt the act.

Sect. 39. "That it shall be lawful for the governor or officer administering the government of any of the British colonies to which this act,

Governors empowered to do-

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

clare computed length of voyage.

Proviso.

as respects the carriage of passengers by sea therefrom, has been hereby extended or shall have been extended by proclamation, as hereinbefore is mentioned, by any proclamation or proclamations to be by him from time to time issued for that purpose, to declare the rule of computation by which the length of the voyage of any ship carrying passengers from such colony to any other place shall be estimated for the purposes of this act: Provided nevertheless, that this act shall not, except as respects the West Indies, and except as hereinafter is mentioned, extend or apply to any such voyage, if the length thereof so computed shall not be three weeks or upwards."

The governor, &c. may issue proclamation substituting other articles of food, &c. if equivalent.

Sect. 40. "That it shall be lawful for the governor or officer administering the government of any of the British colonies to which this act has, as respects the carriage of passengers by sea therefrom, been hereby extended, or shall have been so extended by proclamation as hereinbefore is mentioned, by any proclamation or proclamations to be by him from time to time issued for that purpose, to substitute for the articles of food and provisions specified in this act such other articles of food and provisions as shall be a full equivalent for the same."

Such proclamation to be transmitted for her majesty's confirmation or disallowance.

Sect. 41 provides and enacts, "That every such proclamation as aforesaid, or as hereinafter is mentioned, shall be transmitted by the governor or officer by whom the same may have been issued to her majesty, through one of her majesty's principal secretaries of state, for her majesty's confirmation or disallowance; and in case the same shall be disallowed by any order to be made by her majesty for that purpose, with the advice of her privy council, then from and after the promulgation of any such order in council within any such colony any such proclamation shall cease to be of any force or authority, but until so disallowed the same shall be duly observed and obeyed: Provided also, that on the production at any one of the colonies aforesaid of an attested copy of any such proclamation as aforesaid, or as hereinafter is mentioned, under the hand of the governor or the officer administering the government of the colony wherein the same may have been issued, and under the public seal of such colony, such attested copy shall, in the colony wherein the same shall be so produced, be received as good and sufficient evidence of the issuing and of the contents of any such proclamation."

Attested copy of such proclamation to be received as evidence in the colony in which it may be produced.

Powers for determining the seaworthiness of any ship vested in governors, &c.

Sect. 42. "That all the powers and authorities which are hereinbefore vested in the collector and comptroller of the customs, for determining the seaworthiness of any ship carrying passengers from any port in the United Kingdom, shall, in respect of any ship carrying passengers from any port in any of the colonies aforesaid, be and the same are hereby vested in the respective governors or officers administering the government of the said colonies respectively."

No bond required for voyages from the colonies.

Sect. 43 provides and enacts, "That as respects voyages from the colonies it shall not be necessary for the master, owner, or charterer of any ship carrying passengers on any such voyage to enter into any such bond as is hereinbefore required to be entered into by the master and owner or charterer of any ship carrying passengers on any such voyage as hereinbefore is mentioned."

Exception of certain provisions of this act in the case of voyages from the colonies.

Sect. 44 provides and enacts, "That the provisions of this act shall not extend or apply to voyages from the colonies, so far as relates to the following subjects; (namely,)

The keeping copies of the act on board:

The use of the form of receipt hereinbefore required to be given for passage money:

The licensing of passage brokers:

The return of passage money and compensation, in case the party cannot be forwarded by the appointed ship, or by some other eligible vessel, and victualling or the payment of subsistence money in case of detention."

Extension of the act, with further

Sect. 45 provides and enacts, "That, except as hereinbefore is excepted with respect to voyages from the colonies, the provisions and regulations

of this act shall extend and apply to voyages from the West Indies of less duration, so computed as aforesaid, than three weeks, but being of not less duration, so computed as aforesaid, than three days, save and except so far as relates to the following subjects; (namely,)

The construction or thickness of the lower deck or platform:

The berths:

The height between decks:

The surgeon and medicine chest:

The maintenance of passengers for forty-eight hours after arrival:

Provided also, that as respects such voyages from the West Indies of less computed duration than three weeks, the owner or charterer of a ship may, if he think fit, contract with the passengers engaging passages therein, that they shall respectively provide themselves with necessary food (not including water) for the voyage; and in such case the regulations of this act respecting the issue of provisions by the master shall not be applicable to such passengers on such voyage."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

exceptions, to voyages shorter than three weeks in the West Indies.

Sect. 46 provides and enacts, "That it shall be lawful for the governor or officer administering the government of any British colony (other than the West Indies) to which this act, as respects the carriage of passengers by sea therefrom, has been hereby extended, or shall hereafter be extended by proclamation, as hereinbefore is mentioned, by the same, or by any subsequent proclamation to be by him issued for that purpose, to declare that the enactment hereinbefore contained respecting voyages from the West Indies of shorter duration than three weeks shall extend and apply to voyages from the colony in respect of which such proclamation shall be issued, such voyage being of less duration, so computed as aforesaid, than three weeks, but not of less duration, so computed as aforesaid, than three days; and thereupon such enactment shall extend and apply to such voyage accordingly."

Power to governors of other colonies to adopt the same extension of the act to voyages shorter than three weeks.

Sect. 47. "That nothing in this act contained extends or shall be construed to extend to prevent the enactment by the respective governors, councils, and assemblies, or other local legislatures, in the British West Indies and South America, and in the Bahama Islands, and in Bermuda, or by her majesty, with the advice of her privy council, of any such acts of general assembly, or ordinances, or orders in council, as may be requisite for making and establishing such several rules and regulations as are required by this act, or any of them, or for carrying the same into full and complete effect: Provided nevertheless, that it shall not be lawful for any such governor, council, and assembly, or for any such local legislature, or for her majesty in council, by any such acts of assembly, ordinances, or orders in council as aforesaid, to make or establish any enactment, provision, rule, or order which shall be in anywise repugnant or contradictory to this act or any part thereof, but that every such enactment, regulation, provision, rule, or order shall be and is hereby declared to be absolutely null and void and of no effect."

Act not to prevent the enactment by colonial assemblies, or by her majesty in council, of laws necessary for establishing the rules and regulations required by said recited act and this act.

Sect. 48 provides and enacts, "That nothing hereinbefore contained shall be construed to apply to any of the territories or places under the government of the East India company, or to any of the governors appointed by the said company: nor shall anything hereinbefore contained affect or be construed to affect the powers now vested in the governor general of India in council to make laws and regulations whereby the provisions of this act, or such of them as to the said governor general of India in council shall seem expedient, shall or may be extended to the territories and places under the government of the said company, or for or in respect of which the said governor general in council has now by law a power of legislation; but it is hereby enacted, that it shall be lawful for the governor general of India in council, from time to time, by any act or acts to be passed for that purpose, to declare that this act, with such exceptions as are hereinbefore mentioned, shall extend and apply to the carriage of passengers upon any voyage from any ports or places within the territories of the East India company, to be specified or de-

Power to the governor general of India in council to adopt this act, with certain exceptions, in India.

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

scribed in such act or acts, to any other places whatsoever, to be also specified or described in such act or acts, and also in like manner to authorize the substitution, as respects such voyages, of other equivalent articles of food and provisions for those hereinbefore enumerated, and to declare the rule of computation by which the length of any such voyage shall be estimated, and to confer the powers hereinbefore conferred upon government emigration agents, and collectors and comptrollers of the customs, with respect to ascertaining and deciding on the seaworthiness of a ship, upon such officers of the East India company as the said governor general in council may think proper; and from and after the passing of such act or acts, and whilst the same shall remain in force, this act shall, with such exceptions as are hereinbefore made as respects voyages from the colonies, apply to and extend to the carriage of passengers upon such voyages as in the said act or acts shall be specified; which acts shall nevertheless be subject to disallowance and repeal, and shall in the same manner be transmitted to England, and be laid before both houses of parliament, as in the case of any other laws or regulations which the said governor general in council is now by law empowered to make."

Mode of proceeding for recovery of penalties in India to be regulated by the governor in council.

Sect. 49. "That it shall be lawful for the governor general of India in council, from time to time, by any act or acts to be passed for that purpose, to declare in what manner, and before what authorities, and by what form of proceedings, the penalties imposed and the sums of money made recoverable by this act shall be sued for and recovered within any places or territories under the government of the East India company, and to what uses such penalties shall be applied."

Act to extend to foreign vessels.

Sect. 50. "That the provisions, regulations, penalties, and forfeitures set forth in this act shall extend and be deemed to extend to foreign vessels carrying passengers upon any voyage from any port or place in the United Kingdom, or in the hereinbefore mentioned islands, to or for any port or place out of Europe, and not being within the Mediterranean sea, or upon any other voyage to which the provisions of this act shall for the time being extend."

Act not to extend to cabin passengers.

Sect. 51. "That wherever the term 'passage' or 'passenger' is used in this act, it shall be held not to include or extend to the class of passages or passengers commonly known and understood by the name of cabin passages and cabin passengers."

Interpretation of act.

Sect. 52. "That in the construction of this act, unless there be something in the subject or context repugnant to such construction, every word importing the singular number or the masculine gender only shall be understood to include and shall be applied to several persons, matters, or things, as well as one person, matter, or thing, and females as well as males respectively."

Title of act.

Sect. 53. "That in all proceedings it shall be sufficient to cite this act by the title of 'The Passengers Act.'"

Commencement of act.

Sect. 54. "That this act shall commence on the first day of October, 1842, and not sooner."

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

SCHEDULES referred to by the foregoing Act.

SCHEDULE (A.)

Referred to in the 17th Section of the Passengers Act.

Ship's Name.	Master's Name.	Tons per Register.	Aggregate Number of Superficial Feet in the several Compartments set apart for Steerage and Intermediate Passengers.	Total Number of Statute Adults the Ship can legally carry.	Where Bound.

I hereby certify, that the provisions actually laden on board this ship, according to the section of the Passengers Act, are sufficient for passengers, computed according to the act.

(Signed) _____ } Master.
_____

Date _____

Nominal List of Passengers.*

Ports of Embarkation.	Name of Passengers.	Adults.			Children under 14 Years.			Profession, Occupation, or Calling of Passenger.	Port at which Passengers have contracted to be landed.
		M.	F.	Total	M.	F.	Total		
	Total Number of Souls equal to Statute Adults								

* We hereby certify the above is a correct list of all the passengers who embarked at the port of _____

(Signed) _____ Master.

(Countersigned) _____ Officer of Customs.

N.B.—Lines should be ruled in the same form, for any additions to the list after the ship first clears out, and similar certificates be subjoined to such additions, according to the requirements of the act.

7. *Regulations as to Passengers.*

5 & 6 Vict. c. 107.

SCHEDULE (B.) referred to in the 19th Section of this Act.

Passengers Contract Ticket.

N. B.—Any one receiving money from or in respect of any passenger about leaving the United Kingdom for any place in North America, without using this form, and correctly filling up the blanks therein, and signing it with his name in full, will be liable to a penalty not exceeding 10*l.* for each such passenger.

Ship of Tons Register Burden, to sail from for on the day of 18 .

Names.	Ages.	Equal to Statute Adults.

I engage that the parties herein named shall be provided with a steerage passage to in the ship with not less than ten cubic feet for luggage for each statute adult, for the sum of £ including head money, if any, at the place of landing, and every other charge; and I hereby acknowledge to have received the sum of £ in $\frac{\text{full}}{\text{part}}$ payment.

Water and provisions according to the annexed scale will be supplied by the ship, as required by law, and also fires and suitable hearths for cooking.

Utensils for eating and drinking will be provided by .*

Bedding will be provided by

Signature _____ { N. B.—If signed by a broker or agent, state on whose behalf.

Date _____

[*At end of this contract insert the victualling scale, which must in no case be less than required under the provisions of the Passengers Act.*]

* Fill up these blanks by stating, in each case, whether the articles are to be supplied by the ship or by the passenger.

Deposit £ _____

Balance £ _____ to be paid at _____

Total £ _____

SCHEDULE (C.) referred to in the 20th Section of this Act.

Form of Passenger Broker's Licence.

*A. B.** of in the having shown to the satisfaction of us, the undersigned justices of the peace in $\frac{\text{quarter}}{\text{petty}}$ sessions assembled, that he hath duly given notice to her majesty's colonial land and emigration commissioners of his intention to make application for a licence to carry on the business of a passage broker or passage dealer in respect of passages to North America: We, the undersigned justices so assembled as aforesaid, and having had no sufficient cause shown to us why the said *A. B.* should not receive such licence, do hereby license and authorize the said *A. B.* to carry on the business of a passenger

* The names in full, with the additions and address of the party applying for the licence, must be correctly inserted.

broker or passage dealer as aforesaid, until the 31st day of December in the year following the present year, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said *A. B.*, as in the Passengers Act is provided.

7. Regulations as to Passengers.

5 & 6 Vict. c. 107.

Given under our respective hands and seals, this day of 18 at

(L. S.)

Justice of the Peace.

(L. S.)

Justice of the Peace

SCHEDULE (D.) referred to in the 20th Section of this Act.

FORM of NOTICE to be given by Passage Broker to Her Majesty's Colonial Land and Emigration Commissioners.

Gentlemen,

I *A. B.* of in do hereby give you notice, That it is my intention to apply, after the expiration of twenty-one clear days from the putting of this notice into the post, to the justices to be assembled in the quarter / petty sessions to be held for for a licence to carry on the business of a passenger broker or passage dealer in respect of passages to North America.

N.B.—The names in full, with the additions and address of the party, must be here correctly inserted.

N.B.—Name the place or district in which the party giving the notice resides.

Signature

Date

To Her Majesty's Colonial Land and Emigration Commissioners.

SCHEDULE (E.) referred to in the 21st Section of this Act.

FORM of NOTICE to be given to Her Majesty's Colonial Land and Emigration Commissioners of Forfeiture of Passage Broker's Licence.

Gentlemen,

This is to give you notice, That the licence granted on the day of 18 , to *A. B.* of in to act as a passage broker or passage dealer, was on the day of now last past duly declared by us, the undersigned justices of the peace in petty sessions assembled, to be forfeited,

The names in full, with the additions and address of the party, to be here inserted.

Here state the reason of forfeiture.

Signatures

Date

To Her Majesty's Colonial Land and Emigration Commissioners, London.

VIII. The Pilot Act, and Regulations as to Pilots.

6 Geo. IV. c. 125.

The 6 Geo. IV. c. 125, is the latest act respecting pilots and pilotage, and by the first section of that act, the 52 Geo. III. c. 39, s. 2. 52 Geo. III. c. 39, 55 Geo. III. c. 87, and all provisions in other acts relative to pilots and pilotage, are repealed.

The corporation of Trinity House of Deptford Strond to license pilots to act within certain limits.

Sect. 2. "From and after the passing of this act, it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby required, after due examination, to appoint and license, under their common seal, fit and competent persons duly skilled to act as pilots, for the purpose of conducting all ships and vessels sailing, navigating, and passing as well up and down or upon the rivers of Thames and Medway, and all and every the several channels, creeks, and docks thereof or therein, or leading or adjoining thereto, between Orfordness and London-bridge, as also from London-bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and in the English Channel, from the Isle of Wight up to London-bridge; and all ships and vessels sailing, navigating, and passing as aforesaid (save and except as hereinafter provided), shall be conducted and piloted within the limits aforesaid, by such pilots so to be appointed and licensed, and by no other pilots or persons whomsoever:" the section then proceeds to provide that pilots heretofore licensed may act until the 31st day of January next after the passing of this act.

Pilots heretofore appointed may act until the 31st January next.

No person shall be licensed by the corporation, except as herein specified, nor take charge of a ship drawing more than fourteen feet water, until he shall have acted three years, and have been then re-examined and again approved.

Sect. 3. "No person shall be licensed by the said corporation of Trinity House of Deptford Strond as a pilot, who shall not have served as mate for three years on board of, or who shall not have been for one year in the actual command of a square-rigged vessel of not less than eighty tons register tonnage, as to licences for the North Channel upwards, and not less than one hundred and fifty tons register tonnage, as to licences for the North Channel, Queen's Channel, South Channel, or other channels downwards, or who shall not have been employed in the pilotage or buoyage service of the said corporation of Trinity House for seven years, or who shall not have served an apprenticeship of five years to some pilot vessel licensed under the said act passed in the fifty-second year of the reign of his late majesty, or under this act; and that no person so licensed shall take charge as a pilot of any ship or vessel drawing more than fourteen feet water in the rivers Thames or Medway, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been, after such three years, on re-examination, approved of in that behalf by the said corporation of Trinity House, on pain of forfeiting 10*l* for every such offence, as well by the person acting as such pilot, as also by the master or other person having the command of such ship or vessel, who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid."

Penalty on him and master of ship.

Pilots to pay an annuity 3*l.* 3*s.*, and 6*d.* in the pound on their earnings;

Sect. 4. "Each and every pilot already licensed by the said corporation of Trinity House of Deptford Strond, or to be licensed by the said corporation under the authority of this act (except only such pilots as have been or shall be so licensed by the said corporation, upon their receiving certificates of examination by any sub-commissioners of pilotage), as in the said act of the fifty-second year of the reign of his late majesty King George III., and hereinafter directed, in lieu and satisfaction of and for all the ancient and accustomed duties heretofore payable by such pilots to the said corporation, shall from time to time and at all times hereafter pay or cause to be paid to the said corporation, or to such person or persons as they shall appoint to receive the same on their behalf, the sum of three guineas, in the month of January yearly; and that each and every pilot so licensed or to be licensed by the said corporation as aforesaid, as well upon receiving such certificates as aforesaid, as otherwise howsoever, shall also from time to time and at all times, from and after the first day

of July next, pay or cause to be paid to the said corporation, or to such person or persons and at such places and times as the said corporation shall in that behalf appoint, a certain poundage of 6*d.* in the pound upon all the pilotage earned by each and every of such pilots, from the said first day of July inclusive, on pain of forfeiture, for default of any of the payments aforesaid, or for any concealment or fraud therein or relating thereto, of double the amount payable, and of being suspended or dismissed from acting as a pilot, at the discretion of the said corporation; which said payments, hereby directed to be made as aforesaid, shall be carried to and applied to the purposes of the pilots' fund of the said corporation hereinafter mentioned."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

to be applied to purpose of pilots' fund.

Sect. 5. "It shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby required to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons at such ports or places in England as they may think requisite (except within the liberty of the Cinque Ports, and all such other ports and places within or for which particular provision shall have been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots), not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called sub-commissioners of pilotage, and shall take the oath in the schedule hereunto annexed, marked (C.), for the faithful discharge of their duty; and such persons so to be appointed shall examine, and they are hereby authorized (so long as their respective deputations or appointments shall not be revoked or superseded by the appointment of other persons in their places) to examine into the qualification of persons to act as pilots for such respective ports and places, and the adjoining coasts specified in their respective deputations or appointments as aforesaid; and it shall be lawful for the said corporation, upon their receiving a satisfactory certificate under the hands of any three of the persons so to be appointed, where the whole number at any port or place shall consist of four or five, and of any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports, and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination."

Corporation of Trinity House to appoint sub-commissioners to examine pilots, and on their certificate of qualification may grant licences.

Sect. 6. "It shall be lawful for the corporations of the Trinity Houses of the ports of Hull and Newcastle respectively to appoint sub-commissioners of pilotage to examine pilots, and give licences for them to pilot ships and vessels into or out of any ports, harbours, or places within the limits of their respective jurisdictions, any thing in this act contained to the contrary notwithstanding: Provided always, that such sub-commissioners as have been already appointed either by the said corporation of Trinity House of Deptford Strond, or by the said corporations of the Trinity Houses of the ports of Hull and Newcastle respectively, under the authority of any act or acts of parliament heretofore passed, shall continue to act in the same manner as if they were appointed under this act."

Trinity Houses of Hull and Newcastle may appoint sub commissioners to examine pilots, &c.

Sub-commissioners already appointed to continue to act.

This enactment is permissive, and not imperative. (*Beilby* v. *Raper*, 3 *B. & Adol.* 284.)

Sect. 7 enacts, that notice of appointment of pilots by the corporation of Trinity House of Deptford Strond be fixed up at the Trinity House, &c., after which no other pilot or person shall act.

Sect. 8. "It shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and required to establish, vary, and alter, from time to time, as circumstances shall render the same necessary, rates of pilotage, in relation to all pilotage performed in any river, port, or place, or upon any coast whatever, by any pilot or pilots already licensed, or who shall be licensed by the said corporation upon their receiving certificates of examination from sub-commissioners of pilot-

Corporation of Trinity House to establish rates for pilotage.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Table of rates to be hung up at Custom-houses of ports, and no greater or less rates to be received or paid.

age as aforesaid, which rates shall be regulated by and proportioned as well to the size and draught of water of the vessels, as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said corporation may think fit to take into consideration in fixing and establishing such rates; of which establishment or alteration of rates of pilotage notice shall be given by hanging up printed tables thereof, corrected from time to time, as variations therein shall be made at the several Custom-houses at the ports to which the said rates shall apply; and no greater or less rates, or other reward or emolument for such pilotage, shall, under any pretence whatever, be demanded, solicited, received, paid or offered, on pain of forfeiting 10*l.* for every such offence, as well by the person demanding, soliciting, or receiving, as by the person paying or offering such greater or less rates, reward, or emolument: Provided that ships, returning by distress of weather, contrary winds, or on account of accident, into ports, in the districts of the Isle of Wight, Plymouth and Falmouth, shall be subject to pay one-half of the common pilotage in the said ports."

Majority of pilots, or any ship owner, dissatisfied with rates, may appeal to privy council.

Sect. 9. "If the major part in number of the pilots who shall be licensed by the said corporation of Trinity House of Deptford Strond, for any particular port or place in consequence of their receiving certificates of examination as aforesaid, shall be dissatisfied with the rates so established or altered for such port or place; or in case any owner of any ship or vessel interested in any such rates, shall be dissatisfied therewith, it shall be lawful for such parties respectively to appeal to his majesty, his heirs and successors, in his or their most honourable privy council, and for any committee of such privy council calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter, and regulate such rates as to them shall appear to be expedient, in case the matter of such appeal shall, in the discretion of the said privy council, or committee thereof, appear to require the making of any order therein."

Licences to be granted for one year and renewable.

Sect. 10. "All and every the licences to be granted under the authority of this act, by the said corporation of Trinity House of Deptford Strond, shall be granted in the first instance up to and until the 31st day of January next ensuing the date thereof, and no longer; and that the same licences, and also all and every the licences heretofore granted by the said corporation of Trinity House of Deptford Strond, and which shall be in force at the time of the passing of this act, shall and may be renewed and confirmed from year to year, up to and until the 31st day of January in every year, and no longer, at the discretion of the said corporation, such renewal and confirmation to be by indorsement on such licences respectively, signed by the secretary to the said corporation for the time being, or by such other person or persons as shall or may be thereunto authorized by the said corporation."

Corporation of Trinity House may make bye-laws and annex penalties for breach.

Sect. 11. "All persons licensed to act as pilots, or in pilot vessels, by the said corporation of Trinity House of Depftord Strond, by virtue of this act, shall from time to time and at all times hereafter be subject to the regulations and government of the said corporation, who are hereby authorized and empowered, as well for ensuring the good conduct and constant attendance of such pilots upon their duty, as for enforcing the general purposes of this act, from time to time to make and frame all such bye-laws, rules, orders, regulations, and ordinances as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage, for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said corporation respectively to annex such reasonable penalties and forfeitures for the breach of such bye-laws, rules, orders, regulations, and ordinances when made, as to them shall seem expedient in that behalf; and from time to time to annul, alter, and amend all or any of the existing bye-laws, rules, orders, regulations, and ordinances, and to make such other

and new bye-laws, rules, orders, regulations, and ordinances as they shall think proper, so as such bye-laws, rules, orders, regulations, and ordinances be made conformable to the true intent and meaning of this act, and shall not be repugnant to the laws of this realm: Provided always, that no bye-laws, rules, orders, regulations or ordinances hereafter to be made by the said corporation, shall have force or effect before they shall have been examined, sanctioned, and approved by the chief justice of his majesty's court of King's Bench, or by the chief justice of his majesty's court of Common Pleas, the sanction and approbation of either of which chief justices shall be verified under his hand and seal; and all and every such bye-laws, rules, orders, regulations, and ordinances, when so made and confirmed as aforesaid, shall be observed and kept and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this act."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Bye-laws to be sanctioned by the chief justice of Queen's Bench or Common Pleas.

Sect. 12. "And in order that all such bye-laws, rules, orders, regulations, and ordinances may be previously examined by the parties interested therein, be it further enacted, That copies of all such proposed bye-laws, rules, orders, regulations, and ordinances shall be transmitted to his majesty's privy council, and to the commissioners of customs in London, three calendar months before the same shall be submitted to such chief justice as aforesaid; and the commissioners of the customs are hereby required, upon the receipt of such copy, to cause the same to be printed and hung up, as soon as the same can be done, in the several Custom-houses of the principal ports in Great Britain, there to be open to the inspection of all persons interested therein at all seasonable times; and notice shall be given in the *Gazette* of such proposed bye-laws being so hung up for inspection as aforesaid."

Proposed bye-laws to be previously transmitted to privy council and to commissioners of customs, the latter of whom to cause printed copies to be hung up at Custom-houses.

Sect. 13. "All such bye-laws, rules, orders, regulations, and ordinances as shall be so made and confirmed as aforesaid, shall be printed, and shall be hung up in some public or conspicuous place in the several Custom-houses of the ports of England, within the limits for which the pilots respectively shall be licensed, and also at the Trinity House in London."

Bye-laws confirmed to be hung up in Custom-houses and Trinity House.

Sect. 14. "From and after the passing of this act, it shall and may be lawful for the lord warden of the Cinque Ports and constable of Dover Castle, or his lieutenant for the time being, and they are hereby required to appoint and license fit and competent persons duly skilled as pilots, for the purpose of conducting all ships and vessels sailing, navigating, and passing from or by Dungeness, up the rivers Thames and Medway to London-bridge and Rochester-bridge, and all and every the several channels, creeks, and docks of the same, and from the south buoy of the Brake to the westward, as far as the west end of the Owers; and all ships and vessels sailing, navigating, and passing as aforesaid (save and except as hereinafter provided), shall be conducted and piloted within the limits aforesaid, by such pilots so appointed and licensed, and by no other pilots or persons whomsoever: Provided always, that it shall be lawful, after the passing of this act, for any pilot or pilots heretofore licensed by the said lord warden and constable for the time being, or his lieutenant for the time being, to pilot or conduct any ship or vessel within such limits as such pilot or pilots might lawfully have conducted and piloted the same immediately before the passing of this act: and the licences so heretofore granted to such pilots as aforesaid shall continue in force notwithstanding this act, so that such pilots do in all things conform themselves to the provisions of this act, and the rules and regulations hereinafter directed to remain in force or be established under the same."

Lord warden of Cinque Ports to license pilots to act within certain limits.

Existing licences to continue in force.

Sect. 15. "No person shall, from and after the passing of this act, take charge of any ship or vessel, as a pilot belonging to the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque-Port pilots, before he shall be examined by the master and two wardens, or by four wardens of the said society or fellowship for the time being, touching his abilities, and shall be approved and admitted into the society or fellowship of the Trinity House of Dover, Deal, and the Isle of

No person shall take charge of any ship as a Cinque-Port pilot, till he has been examined and admitted.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Thanet, by the lord warden of the Cinque Ports, and constable of Dover Castle for the time being, or his lieutenant for the time being; and if any person shall presume to act as a pilot belonging to the said society or fellowship, without having been so examined, approved, and admitted as aforesaid, every such person shall for the first offence forfeit 10*l.*, for the second 20*l.*, and for every other offence 40*l.*"

Nor of ships drawing more than 11 feet 6 inches, until he has been licensed and acted three years; 14 feet, five years; and 17 feet, seven years.

Sect. 16. "No person belonging to the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, commonly called Cinque-Port pilots, shall, from and after the passing of this act, be allowed to take charge as a pilot of any ship or vessel drawing more than eleven feet six inches water, until he shall have been licensed and acted as a pilot for three years; or of any ship or vessel drawing more than fourteen feet water, until he shall have been licensed and acted as a pilot for two years more, making five years; or of any ship or vessel drawing more than seventeen feet water, until he shall have been licensed and acted as a pilot two years more, making seven years in the whole; and at the expiration of such period of seven years, such pilot shall be again examined as to his fitness and competency, and if he shall be approved of and licensed on such examination, shall be authorized and allowed and entitled to take charge of any ships or vessels of any draught of water."

Master and wardens of fellowship appointed to examine pilots shall take the oath in schedule marked (B.)

Sect. 17. "The master and such wardens of the said society or fellowship of pilots of the Trinity House of Dover, Deal, and the Isle of Thanet, as shall be appointed from time to time to examine into the skill and ability of any person on his being first admitted as a pilot into the said society or fellowship, or after he shall have been licensed and served for seven years, shall take the oath marked (B.) in the schedule hereunto annexed, to be administered unto him or them respectively by the registrar of the court of Loadmanage, who is hereby authorized to administer such oath."

A number of Cinque-Port pilots shall constantly ply at sea to take charge of ships coming from westward: and upon signals of fleets, all pilots shall prepare to go off.

Sect. 18. "A proper and sufficient number of pilots of the Cinque Ports, not less than eighteen at any one time, and in succession, from time to time, without intermission or any unnecessary delay, shall, at all seasonable times, by day and night, constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships and vessels coming from the westward; and such pilots shall not allow any ship or vessel, having a signal for a pilot flying, to pass without attempting to board her; and that upon proper signals being made at and from signal-houses now erected, or which may be erected, on commanding situations, near to Dover, for that purpose, giving notice of the approach of any fleet of ships or vessels coming from the westward, all Cinque-Port pilots not on duty at the time shall, according to such rules and regulations as to number, rotation, or otherwise, as have been or shall be made in that behalf, forthwith prepare to go afloat, and shall go off in sufficient time to fall in with such ships and vessels, on pain of forfeiting, in case of neglect herein, for the first offence, the sum of 20*l.*, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter as a pilot."

Masters of ships from westward not having a pilot shall display a signal for one, and facilitate his getting on board.

Sect. 19. "The master or other person having the command of any ship or vessel coming from the westward, and bound to any place in the rivers Thames or Medway, not having a duly qualified Cinque-Port pilot on board, shall, on the arrival of such ship or vessel off Dungeness, and until she shall have passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or have been at anchor for one hour, as hereinafter mentioned, display and keep flying the usual signal for a pilot to come on board; and if any duly qualified Cinque-Port pilot shall be within hail or approaching and within half a mile, with the proper distinguishing flag flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time or shortening sail, or by all practicable means consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall

give the charge of piloting his ship or vessel to such Cinque-Port pilot; and every person commanding any such ship or vessel, who shall not display and keep flying the usual signal for a pilot to come on board, from the time such ship or vessel shall have arrived off Dungeness, and until she shall have passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, (unless in the meantime a duly qualified Cinque-Port pilot shall have come on board,) or who shall within the limits aforesaid decline to take on board the first duly qualified Cinque-Port pilot who shall offer, or to give charge of his ship or vessel to such duly qualified Cinque-Port pilot, or who shall not heave to, shorten sail, or otherwise consistently with the safety of the ship or vessel facilitate such pilot's coming on board as aforesaid, shall forfeit and pay double the amount of the sum which would have been demanded for the pilotage of such ship or vessel: Provided always, that if any ship or vessel coming from the westward, and bound to any place in the rivers Thames or Medway, shall anchor any where in the Downs between the South Foreland, and a line drawn from Sandown Castle to the south buoy of the Brake, having any licensed pilot other than a duly qualified Cinque-Port pilot on board, it shall not be necessary for the master of such ship or vessel to display or keep flying the usual signal for a pilot to come on board thereof, any longer than for and during one hour next after such ship or vessel shall so have anchored as aforesaid; and it shall be lawful for any duly qualified Cinque-Port pilot at any time before such ship or vessel shall have been at anchor one hour with such signal flying as aforesaid, to repair on board the same, and to take charge of her up the said rivers, but not otherwise."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Ships anchoring in certain limits, not having a Cinque Port pilot, to display a signal, and Cinque-Port pilot may within an hour repair on board and take charge.

Sect. 20 Empowers the court of Loadmanage to settle the compensation to be paid to upper book pilots by lower book pilots for being allowed to take charge of ships of greater draught.

Sect. 21. "All persons licensed or to be licensed to act as Cinque-Port pilots shall from time to time and at all times hereafter be subject to the regulations and government of the lord warden of the Cinque Ports and constable of Dover Castle for the time being, and it shall be lawful for the master and wardens of the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, and the lord warden of the Cinque Ports and constable of Dover Castle for the time being, his lieutenant for the time being, and the deputy lieutenant for the time being, or either of them, with the assent of the commissioners of Loadmanage, or the major part of them, present at an assembly commonly called a court of Loadmanage, to be held by the said lord warden or his deputy, as and when they shall see fit, or occasion shall require, to annul, alter, or amend the rules and regulations of the said lord warden or court of Loadmanage, which shall be in force at the time of the passing of this act, and which are hereby directed to remain in force notwithstanding the same, and to make from time to time such other sufficient rules and orders for enforcing the due observance of the provisions of this act by all Cinque-Port pilots, and for providing for the good government, constant attendance, and regulation of all such pilots in going off to and taking charge of, and conducting and navigating his majesty's ships and vessels, and the ships and vessels in his majesty's employ, and also all ships and vessels whatever and wheresoever, within the proper and usual limits of such pilots, or wherein they shall for the time being act or be; and for effectually securing the performance of all the duties and services of such pilots at all times, and all alterations and amendments in such rules and regulations so in force as aforesaid, and all other rules and regulations, or alterations or amendments thereof, hereafter to be made, shall, before the same are allowed to take effect, or become binding on any person or persons whatever, be printed and transmitted to the Custom-house in London, and there hung up in some conspicuous place in the long room of the said Custom-house; and notices shall be published in the *Gazette*, and put up at the Custom-houses within the Cinque Ports, of such rules and regulations, or any

Cinque-Port pilots to be subject to rules and regulations of lord warden, &c.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

alterations thereof, for inspection for one calendar month, in order that any persons interested therein, whether as owners or masters of ships, or pilots, or otherwise, may transmit to the lord warden of the Cinque Ports, or his lieutenant, any objections which they may have thereto, for the purpose of the same being altered or confirmed; and if no objection to the rules and regulations so made or altered shall be proposed, by or on the behalf of any person or persons, within the space of thirty days after the notices shall have been given and made public, in the manner hereinbefore provided, they shall have the same force and effect to all intents and purposes as all other rules and regulations for the government of pilots within the jurisdiction of the Cinque Ports have; but if an objection shall be made to the lord warden, or his lieutenant, by or on behalf of any person or persons, to any rule or regulation, or to any alteration in any rule or regulation, of which notice shall be given as aforesaid, within thirty days after the publication thereof, then and in such case the operation thereof shall be suspended until reference shall be had to his majesty's most honourable privy council, who are hereby authorized and empowered to hear as well any person who shall be deputed by the court of Loadmanage, as by the person or persons objecting, and finally to decide as to the confirming, altering, or rejecting such rules or regulations, which decision of the privy council shall be final and binding on all parties; and copies of such rules or regulations shall be delivered to every member of the said society or fellowship, and also to every new member of the said society on his election; and a copy or extract thereof shall be at all times in the possession of every pilot belonging to the Cinque Ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish rates of payment out of such surplus earnings of the lower book pilots, as may arise from their being allowed to take the higher classes of ships, in the absence of pilots of the upper book, under the provisions of this act, for the better support and maintenance of the upper book pilots, and also penalties and forfeitures for the enforcing such rules and regulations, and better ordering of the said pilots, and for suspending or depriving any of the said pilots of their licences for breaking such rules or orders, or omitting to do any thing required by the same to be done, or for acting in anywise contrary to such rules or orders."

If such rules defective, privy council shall amend, correct, or enlarge same.

Sect. 22. "If any such rules and regulations so hereafter to be made in relation to Cinque-Port pilots as aforesaid shall appear to be in any material point erroneous, insufficient, or defective, it shall be lawful for the owner of any ship, or other person interested in the matter of such rules or regulations, to apply to his majesty's most honourable privy council, who shall thereupon amend, correct, or enlarge the same, or cause such other proper and sufficient rules and regulations to be drawn up for the purposes aforesaid; which rules and regulations so made, or so amended, corrected, and enlarged, shall be distributed, published, and made use of in such manner as his majesty's said privy council shall in that behalf appoint and direct; and the same shall take effect from such time as in the said rules or regulations shall be expressed in regard to the commencement thereof."

As to the number of Cinque-Port pilots, and how and when to be increased.

Sect. 23. "And whereas under the provisions of an act passed in the forty-eighth year of the reign of his said late majesty King George the Third, intituled 'An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British Seas,' the number of pilots of the Cinque Ports was increased to one hundred and forty, and it hath been found that the said last-mentioned number is at present, in the time of peace, more than sufficient for the trade and navigation of this kingdom; be it therefore enacted, That until the number of such pilots shall by death or otherwise be reduced below one hundred and twenty, or shall be added to, as hereinafter mentioned, it shall not be lawful for the said lord warden and constable of Dover Castle, or his lieutenant for the time being, without special permission in that behalf given by his majesty's

most honourable privy council, upon the recommendation of the said corporation of Trinity House of Deptford Strond, to fill up any more than each alternate vacancy which shall arise in the number of such pilots: Provided always, that twenty Cinque-Port pilots more, or any less number of such pilots, shall and may be added to the then existing number whenever such addition shall be directed to be made by an order of such privy council, upon application thereto for that purpose by the said corporation of Trinity House, and in like manner from time to time, so as the number of Cinque-Port pilots shall not at any one time exceed one hundred and eighty, of which said reduction or additions respectively notice shall be given by or under the authority of the lord warden of the Cinque Ports, in the *London Gazette*, and in one or more newspaper or newspapers circulating in the counties of Middlesex and Kent."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Sect. 24. "Whenever such additions to the number of the said pilots shall respectively take place, as hereinbefore provided, the numbers so increased shall from thenceforth be kept up from time to time by the appointment of pilots in succession, so often as any vacancy or vacancies shall happen by death, incapacity, or dismission: Provided always, that in time of peace no more than each alternate vacancy in the number of Cinque-Port pilots shall be filled up without a special permission in that behalf given by his majesty's privy council, upon the recommendation of the said corporation of Trinity House, unless the number of such pilots shall, at the time of such filling up, be reduced below one hundred and twenty, in which case such vacancy shall and may be filled up from time to time without such permission as aforesaid."

The increased number of pilots shall be kept up.

But in peace no more than each alternate vacancy shall be filled up without permission of privy council, unless number below 120.

Sect. 25. "From and after the passing of this act, the respective rates or prices hereinafter enumerated in the tables marked (A. and B.) respectively in the schedule marked (A.) to this act annexed, shall and may be lawfully demanded and received by any pilot licensed, or to be licensed, by the said corporation of Trinity House of Deptford Strond, or by the lord warden of the Cinque Ports, and constable of Dover Castle for the time being, or his lieutenant for the time being respectively, for the piloting or conducting of any ship or vessel from place to place, as expressed in the said tables respectively; (that is to say,) the respective rates or prices enumerated in the said table marked (A.) shall and may be demanded and received by any pilot licensed, or to be licensed by the said corporation; and the respective rates or prices enumerated in the said table marked (B.) shall and may be demanded and received by any pilot licensed, or to be licensed, by the said lord warden of the Cinque Ports and constable of Dover Castle for the time being, or his lieutenant for the time being; and no greater or less rates or prices, or other reward or emolument, shall, under any pretence whatever, be demanded, solicited, received, paid, or offered, than such rates or prices, on pain of forfeiting 10*l.* for every such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying, or offering such greater or less rate or price, reward, or emolument."

Rates in tables (A.) and (B.) of schedule (A.), may be demanded by pilots, and no greater or less.

Sect. 26. "It shall and may be lawful for the said corporation of Trinity House of Deptford Strond (as to the said rates or prices to be demanded and received by pilots licensed, or to be licensed, by the said corporation), and for the said lord warden of the Cinque Ports, and constable of Dover Castle for the time being, or his lieutenant for the time being (as to the said rates or prices to be demanded and received by pilots licensed, or to be licensed, by the said lord warden and constable, or his lieutenant), and they are hereby respectively authorized and empowered from time to time, and at any time or times hereafter, with the consent of his majesty, his heirs and successors, in his or their most honourable privy council, to increase, reduce, alter, or modify, all or any or either of the said respective rates or prices so enumerated in the said tables respectively, or to substitute other rates or prices in lieu thereof, and the same rates or prices so increased, reduced, altered, modified, or substituted as aforesaid, again in like manner, and with the like consent, from time to time to increase,

Rates may be varied by corporation of Trinity House and lord warden of Cinque Ports respectively, with consent of privy council.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

reduce, alter, or modify, or others to substitute in lieu thereof, and to fix and determine the period (so that the same be not less than three calendar months from the giving of the notice hereinafter mentioned), from and after which such altered or substituted rates and prices are to be demanded, of which rates and prices, and of the period from and after which the same are to be demanded, notice shall from time to time be given, by hanging up printed tables thereof in some public or conspicuous place in the Custom-house of London, and also at the Trinity House in London; and from and after the period specified in such last-mentioned tables, the respective rates or prices therein enumerated may and shall be demanded and received by any pilot licensed by the said corporation of Trinity House, or by the lord warden of the Cinque Ports and constable of Dover Castle for the time being, or his lieutenant for the time being respectively, instead of the said several rates and prices mentioned in the said tables marked (A.) and (B.) respectively; and from and after such period, no greater or less rates or prices, or other reward or emolument, shall, under any pretence whatever be demanded, solicited, received, paid, or offered, on pain of forfeiting 10*l.* for every such offence, as well by the person demanding, soliciting, or receiving, as also by the person paying or offering such greater or less rate or price."

Persons applying for licences to execute a bond for securing obedience to bye-laws.

Sect. 27. "Every person who shall apply for a licence to act as a pilot by virtue of this act, shall, before any licence shall be granted to him, execute a bond in a penal sum, at the discretion of the said corporation of Trinity House of Deptford Strond, or of the lord warden of the Cinque Ports and constable of Dover Castle for the time being, or his lieutenant for the time being (as the case may be), to an amount not exceeding 100*l.*, to be paid to the said corporation, or to the society or fellowship of pilots of Dover, Deal, and the Isle of Thanet (as the case may be), their successors or assigns, with a condition subjoined thereto for better securing the due obedience of such pilot to the bye-laws, rules, orders, regulations, and ordinances made in pursuance of any act or acts of parliament heretofore passed, or which shall be made and framed pursuant to this act, which bond shall be capable of being given in evidence in any court of law or equity, without being stamped according to the laws relating to the stamp duties: Provided always, that all bonds before given by pilots under any former act or acts of parliament shall continue in force, and be deemed to be given under this act, unless new bonds shall in any case be required by the said corporation, or by the said lord warden and constable, or his lieutenant respectively, in which case new bonds shall be given accordingly."

Bye-laws, &c. under former act to remain valid, unless altered by this act.

Sect. 28. "All bye-laws, rules, orders, regulations, and ordinances made under the said recited act of the forty-eighth year of the reign of his said late majesty, or under the said recited act of the fifty-second year of the reign of his said late majesty, or either of them, and which shall be in force under the same respectively at the time of the passing of this act, shall remain, continue, and be in full force and virtue, until the same respectively shall have been annulled or altered, or other bye-laws, rules, orders, regulations, or ordinances made in lieu thereof under this act, and shall be and are hereby declared to be good and valid bye-laws, rules, orders, regulations, and ordinances under this act, as fully as if they had been made under the authority of the same; any thing hereinbefore, or in any other act of parliament, to the contrary notwithstanding."

Licences may be revoked, annulled, or suspended.

Sect. 29. "As well every such licence so granted or to be granted, renewed, or confirmed, by the said corporation of Trinity House of Deptford Strond as aforesaid, as also every such licence so granted or to be granted by the said lord warden of the Cinque Ports and constable of Dover Castle, or his lieutenant for the time being, as aforesaid, shall and may be by the said corporation, or by the said lord warden and constable of Dover Castle, or his lieutenant for the time being respectively, annulled, suspended, or adjudged to be forfeited, in such manner and at any such time or times as to them the said corporation and lord warden, or his

lieutenant for the time being respectively, shall seem meet, as well during as at the end of the period for which such licences respectively shall have been so granted, renewed, or confirmed as aforesaid."

6 Geo. IV. c. 125.

Pilots so suspended, &c., and persons complaining against them, may appeal to privy council.

Sect. 30. "Every pilot whose licence shall be revoked, annulled, suspended, or adjudged to be forfeited, or who shall be suspended from acting as a pilot, as hereinbefore or hereinafter mentioned, shall and may, at any time within six months next after such revocation, annulling, suspension, or adjudication shall have been made, and upon giving notice to the corporation or other authority by which such licence shall have been so revoked, annulled, or suspended, or such adjudication made as aforesaid, and every person who, having complained of any such pilot, shall be dissatisfied with the adjudication made upon the matter of such complaint by the corporation or other authority which shall have cognizance thereof, shall and may, at any time within six months next after such adjudication and upon giving notice to the corporation or other authority by which such adjudication was made, appeal to his majesty's most honourable privy council, who shall thereupon hear the appeal, and confirm or annul any determination or adjudication in the premises, or at their discretion make any particular and special order relating thereto, and to the matter of such appeal, and the costs thereof, as the case may require."

Vessels to be licensed for having pilots in attendance at sea, &c.

Sect. 31. "It shall be lawful for the said corporation of Trinity House of Deptford Strond, and for the said society or fellowship of pilots of Dover, Deal, and the Isle of Thanet, and also for all other corporate bodies or persons having lawful authority to appoint pilots within the limits of their respective jurisdictions, to license vessels of such size and description as shall appear to them to be proper, for the purpose of having pilots constantly in attendance in such vessels at sea, and to nominate and appoint, and from time to time to remove and again appoint the masters of such vessels respectively; and for the better support of such pilot vessels, it shall be lawful for any number of pilots, licensed by virtue of this act, or otherwise lawfully licensed, with the consent of the said corporate bodies, or persons by whom respectively such pilots have been or shall be appointed as aforesaid, to constitute a joint stock company or companies, for the providing and maintaining of such pilot vessels, which companies and the said vessels shall at all times be subject to such rules and regulations as shall from time to time be sanctioned and approved in that behalf by the corporate bodies, or persons by whom respectively such pilots shall respectively have been licensed."

How pilot-boats are to be distinguished.

Sect. 32. "Every pilot-boat or vessel, or other boat or vessel, in the pilot service of any corporation or society established by law, in relation to pilotage, or of or belonging to any person authorized to act as a pilot by such corporation or society, shall, at all times, and on every station, be fitted with black sides, and have the upper streak, next the gunwale, painted white, and shall, while afloat, carry a flag at the mast-head, or on a sprit or staff, or in some other equally conspicuous situation, which flag shall be of large dimensions, proportioned to the size of the boat or vessel carrying the same, and shall be half red and half white, in horizontal stripes, of which the uppermost shall be white, and the same shall at all times be kept and preserved in a clean and distinct condition, so as to be easily discerned at a proper and sufficient distance; and every such boat or vessel shall also have the name of the principal pilot thereof, for the time being, painted in broad white letters, of three inches in length, on a black ground, on her stern, and on each bow such number as shall be expressed in the licence of such principal pilot, which name and number shall not be hid or concealed by any person at any time, on pain of forfeiting, for the omission or evasion of any of the provisions hereinbefore made, in respect of such pilot-boat or vessel, the sum of 20*l.* to be paid by the senior pilot on board, who is hereby declared answerable for the due observance of the matters aforesaid, by every person on board such boat or vessel; and in case any pilot shall be carried off in any boat not in the service of any such corporation or society, such pilot shall exhibit

Pilot carried off in any other boat to display a flag.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

a similar flag at the mast-head, or on a sprit or staff, to distinguish that such boat has a pilot on board, on pain of such pilot so carried off forfeiting the sum of 20*l.*, unless he shall show reasonable cause for having omitted to exhibit such flag."

Penalty for carrying distinguishing flag without having a pilot on board.

Sect. 33. "If any boat or vessel, not having a licensed pilot on board, shall without lawful authority carry such distinguishing flag as aforesaid, the owner or owners, or the master or other person having charge of such boat or vessel, displaying or carrying any such flag, shall for every such offence forfeit and pay a sum of 100*l.*"

Boat running before a vessel, not having a pilot, and which cannot be boarded, entitled to pilotage.

Sect. 34. "If any boat or vessel shall run before any ship or vessel not having a licensed pilot on board, when such ship or vessel cannot, from particular circumstances, be boarded for the purpose of directing her course, until a licensed pilot can be put on board, the pilot on board such boat or vessel, or if no pilot shall be on board, and the person having charge of her shall run her before such ship or vessel, at the request or by the direction of the master, or other person having the command thereof, then such person having charge of such boat or vessel shall be entitled to the full pilotage for the distance run, until a duly licensed pilot shall be put on board, as if such pilot, or person respectively, had been actually on board such ship or vessel, and had the charge of her as a pilot."

Name, &c. of pilots appointed to be transmitted to Trinity House, and a list of all pilots annually to Trinity House and Custom-house.

Sect. 35. "From and after the passing of this act, all bodies politic and corporate, and all and every other person or persons, authorized to appoint or license pilots in or for any port of England, or any of the seas, coasts, harbours, or rivers thereof, or places therein, shall from time to time, as and when each appointment of a pilot shall be by them respectively made, forthwith transmit to the corporation of Trinity House of Deptford Strond, at the Trinity House in London, and to the commissioners of his majesty's customs, at the Custom-house in London, the christian and surname, age, and place of residence of every such pilot so appointed, distinguishing the limits within which such pilot is appointed to act, and by whom such appointment is made; and the said bodies politic and corporate, and other persons, authorized to appoint or license pilots as aforesaid, shall and they are hereby required to transmit to the said corporation of Trinity House, at the Trinity House aforesaid, and to the said commissioners of customs, at the Custom-house aforesaid, annually, on the thirty-first day of December, or within one calendar month afterwards, a list, corrected up to the said thirty-first day of December in each year, of the names and residences of all the pilots within their several jurisdictions, in which list so to be transmitted to the Trinity House as aforesaid, shall be stated all such alterations (if any) as may have been made in the rates of pilotage charged, or in the rules and regulations for governing pilots within their respective districts."

Commissioners of customs to transmit to their principal officers at ports in England names, &c. of pilots residing within the limits of each port.

Sect. 36. "And whereas by certain acts of parliament for the more effectual performance of quarantine, pilots are required, on going on board ships arriving from foreign parts, in certain cases to give information to the commanders thereof respecting proclamations and orders in council relative to the performance of quarantine, which renders it necessary that notice of such proclamations and orders should have been previously communicated to all pilots throughout England; be it further enacted, That the said commissioners of his majesty's customs shall from time to time with all convenient speed transmit to the principal officers of the revenue under their management, at the several ports in England, the names and places of residence of all such pilots of whose nomination they shall receive notice from the proper authority, or who shall be in the list so annually to be transmitted to such commissioners as aforesaid, as shall reside within the limits of each port respectively, in order that the said principal officers at the several ports may be enabled to communicate and deliver to every pilot within the limits of such ports respectively copies of all proclamations or orders in council respecting the performance of quarantine by ships arriving from infected places, which the said officers are hereby required to communicate accordingly."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Sect. 37. "The said corporation of Trinity House of Deptford Strond, and the court of Loadmanage of the Cinque Ports, and all other corporations and persons authorized to manage or direct pilots in any part of England, under the authority of any act of parliament or charter whatever, shall annually, on the first day of January in every year, or within one calendar month then next following, transmit to the office of the receiver of the sixpenny duty in the port of London a list of all the vessels of every description employed by them respectively, or by persons under their authority, for the purposes of pilotage, with the number of men and boys belonging to or serving in any such vessels."

List of vessels employed for pilotage, with number of hands, to be annually transmitted to receiver of sixpenny duty in port of London.

Sect. 38. "No pilot shall be taken to sea beyond the limits of his district by the commanding officer of any of his majesty's ships, or by the master or other person having the command of any other ship or vessel whatever, without such pilot's free consent, except under circumstances of absolute and unavoidable necessity; and then and in such case every pilot so taken to sea shall over and above his pilotage have and receive 10*s.* 6*d.* *per diem*, to be computed from and inclusive of the day next after the day on which the ship or vessel shall pass the limit to which such pilot was engaged to pilot her up to, and until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there."

No pilot to be taken to sea beyond his limits, without his consent, except in case of necessity, and then he shall receive 10*s.* 6*d.* per diem above his pilotage.

Sect. 39. "All pilots whose licences shall authorize them to pilot ships or vessels from any place to the westward up to London-bridge, shall qualify themselves, and shall be examined as to their qualification and ability to conduct any ship or vessel into and out of Ramsgate harbour, and the harbours of Dover, Sandwich, and Margate, and shall be obliged to pilot any ships or vessels into and out of any of the said harbours; and if any such pilot shall refuse to take charge of or conduct any ship or vessel into or out of any of the said harbours, such pilot shall forfeit all pay and reward to which he might otherwise have been entitled for the pilotage of any such ship or vessel, and shall be subject to such fine or other punishment as shall be established in that behalf by the bye-laws, rules, orders, regulations, or ordinances of the corporation, or other authority, from which the licence of such pilot shall have been derived."

Pilots shall qualify themselves, and conduct ships into and out of Ramsgate and other harbours.

Sect. 40. "Every licensed pilot who shall take charge of and conduct any ship or vessel into or out of Ramsgate harbour, or into or out of the harbours of Dover, Sandwich, or Margate, shall be entitled to and shall receive for such pilotage at and after the rate of 5*s.* for every foot of the draught of water of the ship or vessel so piloted and conducted by him into or out of any such harbours."

Rates for such pilotage.

Sect. 41. "The master or other person commanding any ship or vessel bound to the river Thames, and which shall repair to Standgate Creek, or any other place appointed for the performance of quarantine, shall pay the full charges of pilotage up to Standgate Creek, or other the place so appointed, and the pilot conducting such ship or vessel to Standgate Creek, or other the place so appointed as aforesaid, shall be entitled to the further sum of 8*s.* *per diem* for the days he shall be obliged to remain on quarantine.

Ships bound to the Thames repairing to places for quarantine, to pay full charges of pilotage, &c.

Sect. 42. "If any pilot taking charge of any ship or vessel into the rivers Thames or Medway shall quit such ship or vessel at Gravesend or Standgate Creek, or in any other part of the Thames or Medway respectively, before such ship or vessel shall have arrived at the place to which she is bound in the said rivers respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall with such consent come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot so quitting such ship or vessel shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to Gravesend, Standgate Creek, or such parts of the Thames or Medway respectively as

Pilots not to quit ships in Thames or Medway, without consent, before arrival at place to which bound.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

aforesaid, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the bye-laws, rules, orders, regulations, and ordinances, hereby directed to remain in force, or which may be made or established in pursuance hereof, any pilots shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination."

Pilot to write his name in log-book, and same to be inserted in report of ships entering the port of London, and reported to Trinity House, and to lord warden of Cinque Ports.

Sect. 43. "Every pilot shall write his christian and surname in the logbook of every master or other person having the command for the time being of any ship or vessel entering the port of London, and required to be piloted according to the directions of this act; and every pilot or other person inserting a false name shall forfeit the sum of 20*l.*; and the master or other person having the command of such ship or vessel shall, in making the entry or report of such ship or vessel inwards, insert or cause to be inserted in such entry or report, the name or names of the pilot or pilots employed or engaged to pilot such vessel into the said port, which insertion shall be made in the said entry or report (without fee or reward) by the proper officer of the customs, who shall report the same to the corporation of the Trinity House daily, and to the lord warden of the Cinque Ports monthly; and such officer is hereby authorized and required to reject such entry or report, unless and until the name or names of the pilot or pilots so employed or engaged as aforesaid shall be inserted or notified to such officer for insertion in such entry or report as aforesaid; and also that the principal searcher or clearing officer of the customs at Gravesend shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of London, and shall transmit monthly lists of such names to the said corporation of Trinity House, on pain of forfeiting a sum not exceeding 10*l.* nor less than 5*l.*, to be paid by each and every of the persons aforesaid, who shall neglect to comply with any of the foregoing regulations."

Monthly reports to be made of vessels clearing outwards.

How pilotage of ships may be recovered.

Sect. 44. "All sums of money which shall become due to any licensed pilot for the pilotage of any ship or vessel, except ships and vessels not having British registers, trading to and from the port of London, shall and may be recovered from the owners or masters of such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for the said ship or vessel in the port of her arrival or delivery, as to pilotage inwards, and in the port from whence she shall clear out or sail as to pilotage outwards, which sums of money shall and may be levied in such and in the like manner, according to the amount of any such sums of money as aforesaid respectively, as any penalty or penalties of the like amount may be recovered and levied under and by virtue of this act, demand thereof being made in writing at least fourteen days before such levy."

Consignees or agents may retain pilotage which they have paid or are liable to.

Sect. 45. "The consignees or agents of any ship or vessel, from whom any sum of money due to any licensed pilot for pilotage shall have been recovered, or shall be recoverable, or by whom any such sum of money shall have been paid, are hereby authorized and empowered to retain in their hands respectively out of any monies which they may have received, or shall thereafter receive, for or on account of such ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage, and any expenses attending the same."

How pilotage of ships not having British registers trading to and from port of London shall be paid.

Sect. 46. "And in order to prevent as well impositions and disputes respecting the charges for, as evasions in the payment of the pilotage of such ships and vessels trading to and from the port of London, and not having British registers, as are by law required to be piloted by pilots licensed by the said corporation of Trinity House, be it further enacted, That from and after the passing of this act the master or other person having the charge of every such ship or vessel which shall enter into or sail from the said port of London, or the consignees of or agents for such ship or vessel, shall pay or cause to be paid at the Trinity House in London, to such person or persons as shall from time to time be in that behalf appointed by the said corporation of Trinity House, the full pilotage

inwards and outwards respectively of every such ship or vessel; (that is to say,) in all cases as to pilotage outwards the full amount of pilotage for the distance which such ship or vessel shall by law be required to be piloted by such licensed pilot as aforesaid; and so far as concerns the pilotage inwards, where a duly licensed pilot shall have been on board such ship or vessel, the full amount of pilotage for the distance piloted by him, if greater than that which such ship or vessel shall be so required to be piloted; and if less, or if no such pilot shall have been on board, then the full amount of the pilotage for the distance which such ship or vessel shall be by law required to be piloted as aforesaid; and if such pilotage inwards be not paid within fourteen days from the day of such ship or vessel's reporting inwards, the same shall and may be recovered by the said corporation from the master or other person having the charge of every such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for such ship or vessel in the said port of London, and shall and may be levied in such and the like manner, according to the amount of any such sums of money respectively, as any penalty or penalties may be recovered and levied under and by virtue of this act."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Sect. 47. "The person or persons so to be appointed by the said corporation of Trinity House of Deptford Strond as last aforesaid shall, upon his or their receiving such pilotage, give to the person paying the same a certificate thereof in writing, and no ship or vessel not having a British register, and being required by law to be piloted as aforesaid, shall be cleared at the office of his majesty's customs in the said port of London, on her outward-bound voyage, without the production of such certificate as aforesaid; and the said person or persons so to be appointed as aforesaid shall, upon proof to the satisfaction of the said corporation that such pilotage service hath been duly performed, pay over to the pilot duly licensed, who shall have had charge of every such ship or vessel, all such sum or sums of money as shall have been received by such person or persons appointed as aforesaid, and as shall be due and payable to such pilot for or in respect of such pilotage service so by him performed, after deducting and retaining thereout the poundage hereinbefore made payable to the said corporation; and the residue of such pilotage received by such person or persons so appointed as aforesaid shall, together with the poundage aforesaid, be carried to and applied to the purposes of the pilots' fund of the said corporation of Trinity House of Deptford Strond hereinafter mentioned."

Certificate of payment of pilotage to be given.

Receivers to pay over to pilot what shall be due to him;

and residue, with the poundage, to be carried to pilots' fund.

Sect. 48. "In any case where such pilotage shall have been received as aforesaid, for or in respect of any ship or vessel not having a British register, if it shall appear to the said corporation that no licensed pilot was in fact employed on board thereof, it shall and may be lawful to and for the said corporation, and they are hereby authorized, if they shall so think fit, out of such pilotage to make or give to any unlicensed person or persons who shall have piloted or assisted in piloting such ship or vessel during so long time as no licensed pilot shall to the knowledge of such unlicensed person or persons, have offered to take charge thereof, such compensation or reward as in the discretion of the said corporation they shall deem proper in that behalf, not exceeding the sum which would have been payable to a duly licensed pilot."

Corporation of Trinity House may, out of pilotage received, reward unlicensed persons who have piloted in absence of licensed pilot.

Sect. 49. "And in order the better to facilitate the ascertaining and settling the amount of the pilotage outward of ships and vessels not having British registers in the port of London, under the authority of this act, be it further enacted, That the rates or amount of pilotage outward, to be payable and paid in respect of all such ships and vessels, shall from time to time be calculated and made out according to the scale or amount of the tonnage of every such ship or vessel upon or according to which such ship or vessel shall be rated in the said port of London, to the payment of the light and other dues payable to the said corporation of Trinity House of Deptford Strond, or according to the draught of water thereof,

How pilotage outward of foreign vessels to be ascertained.

8. *The Pilot Act, &c.*

as the said corporation of Trinity House of Deptford Strond shall in their discretion think most proper; any thing herein contained to the contrary thereof notwithstanding."

6 Geo. IV. c. 125.

How controversies respecting draught of water, of vessels on Thames, to be settled.

Sect. 50. "And in order to prevent or settle controversies concerning the draught of water of ships and vessels from time to time on the river Thames, (not having British registers,) be it further enacted, That whenever any difference about the draught of water of any ship or vessel shall arise between the master or other person having the command of any such ship or vessel, and any person who shall have piloted the same into the said river, or who shall be required to pilot the same therefrom, pursuant to the directions of this act, the said corporation of Trinity House of Deptford Strond, or some proper officer or person appointed by them, shall admeasure the draught of water of such ship or vessel, and shall settle and determine the same between the parties, upon application made by either of them to the said corporation within twelve hours after such ship or vessel shall have arrived at her moorings in the river on any inward voyage, or before the cargo thereof shall be begun to be unladen, or before such ship or vessel shall quit her moorings on any outward voyage, for which admeasurement the officer or person making the same shall be paid one guinea if the ship or vessel shall be below the entrance to the London Docks at Wapping, and half a guinea if above the said entrance to the London Docks, by the person against whom the said officer or person so appointed by the corporation of the Trinity House shall decide."

Corporation of Trinity House to make regulations with respect to pilotage of small foreign vessels.

Sect. 51. "And whereas it may be expedient from time to time to relieve such ships and vessels not having British registers as may come to the port of London with fish, corn, or other provisions, in manner hereinafter directed; be it therefore enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and empowered from time to time, at their discretion, to make all such regulations in relation to the piloting of ships not having British registers, bringing fish, corn, or other provisions into the port of London, and which are or ought to be piloted by pilots licensed by the said corporation of Trinity House, for the ease and relief of such ships and vessels in respect of the rates or amount of pilotage hereby made payable or demandable for such ships and vessels, or for the exemption of such ships or vessels from any such rates or amount, or from any rules or regulations as to the pilotage of such ships or vessels under the provisions of this act, or of any other act of parliament relating to pilotage, or under any law or usage whatsoever, as the said corporation of Trinity House of Deptford Strond shall from time to time deem just, proper, and expedient, in relation to such ships and vessels respectively; any thing herein contained to the contrary thereof notwithstanding."

Funds arising from surplus rates of pilotage on ships not having British registers to be applied for relief of indigent pilots, &c.

Sect. 52. "And whereas under and by virtue of the said acts, passed in the forty-eighth and fifty-second years of the reign of his said late majesty king George the Third, the surplus rates of pilotage imposed on ships not having British registers have been applied in creating funds for the relief of superannuated and infirm pilots belonging to the said corporation of Trinity House of Deptford Strond, and the fellowship of the Cinque Ports respectively, as in the said acts mentioned; and it is expedient that the surplus rates of pilotage imposed by this act on such ships should be carried to such funds respectively, and that the said funds should be applied as hereinafter mentioned; be it therefore enacted, That as well the fund already created for such superannuated and infirm pilots belonging to the said corporation of Trinity House of Deptford Strond as aforesaid, as also all such surplus rates by this act imposed or to be imposed as aforesaid, on ships not having British registers, which shall pertain to the establishment of the said corporation of Trinity House, shall be carried to a fund to be called 'The Pilots' Fund,' and that such last-mentioned fund shall be applied by the said corporation in the manner following; (that is to say,) after defraying the expenses of carrying this act into execution, so far as concerns the said corporation of Trinity

House, the said fund shall be applied by the said corporation for the better support, maintenance, or relief of such indigent pilots belonging to the said corporation, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, and of the wives, widows, and children of such pilots, to be applied and distributed in such manner and under such rules and regulations as the said corporation of Trinity House shall order and provide; and that as well the fund already created for such superannuated and infirm pilots belonging to the society or fellowship of the Cinque Ports as aforesaid, as also all such surplus rates of pilotage by this act imposed or to be imposed as aforesaid on ships not having British registers, which shall pertain to the establishment of the Cinque Ports, shall be applied by the said court of Loadmanage for the better support, maintenance, or relief of such indigent pilots belonging to the said society or fellowship as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity, to be applied and distributed in such manner and under such rules and regulations as the said court of Loadmanage shall order and provide; and as well all and every the pilots who shall receive any such surplus rates, as also the person or persons to whom the pilotage of ships and vessels not having British registers, and entering into or sailing from the said port of London, is by this act directed to be paid, shall and they are hereby required to pay over all such surplus rates to such receivers, and at such convenient places as shall be in that behalf respectively appointed by the said corporation of Trinity House, and by the said lord warden and court of Loadmanage respectively; of all which receipts, and of the appropriations aforesaid, the said corporation, and the said lord warden and court of Loadmanage respectively, shall annually lay an account before parliament, within twenty days after the commencement of each session."

Owners, &c. of ships not liable for loss from want of a proper pilot, unless arising from refusal to take one, &c.

Sect. 53. "No owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whatsoever, from or by reason or means of no licensed pilot being on board of any such ship or vessel, or of no duly qualified pilot being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means, consistently with her safety, for the purpose of taking on board thereof any pilot who shall be ready and offer to take charge of the same."

Owners not liable for more than the value of the ship and freight.

Sect. 54. "Nothing in this act contained shall extend or be construed to extend to make the owner of any ship or vessel liable in any such case for any loss or damage beyond the value of such ship or vessel, and her appurtenances, and the freight due or to grow due for and during the voyage wherein such loss or damage may happen or arise."

Owners or masters not to be liable for loss arising from incompetency of pilots.

Sect. 55. "No owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof."

Act not to deprive persons of remedies previously existing.

Sect. 56. "Nothing in this act contained shall extend or be construed to extend to deprive any person or persons of any remedy or remedies upon any contract of insurance, or of any other remedy whatsoever, which he or they might have had if this act had not been passed, by reason or on account of the neglect, default, incompetency, or incapacity of any pilot duly acting in the charge of any ship or vessel under or in pursuance of any of the provisions of this act, or by reason or on account of no pilot, or of no duly qualified pilot, being on board of any such ship or vessel, unless it shall be proved that the want of a pilot, or of a duly qualified pilot, shall have arisen from any refusal to take a pilot or a duly qualified

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125

pilot on board, or from the wilful neglect of the master of such ship or vessel, in not heaving to or using all practicable means consistently with the safety of such ship or vessel, for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel."

Licensed pilots not liable for neglect or want of skill beyond its penalty and the pilotage.

Sect. 57. "No pilot licensed or to be licensed as aforesaid, who shall have executed the bond hereinbefore directed to be executed by him, and shall be piloting or conducting, within the limits specified in his licence, any ship or vessel which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be liable to any action for damages at the suit of the party grieved in any greater sum than the amount which shall have been specified by way of penalty in such bond, and the pilotage payable to him in respect of the voyage on which such ship or vessel shall then be, for any loss or damage which shall happen from or by reason or means of his neglect or want of skill whilst acting in his capacity of a pilot on board such ship or vessel."

Penalty on masters of vessels piloted by other than licensed pilot.

Sect. 58. "Every master of any ship or vessel who shall act himself as a pilot, or who shall employ or continue employed as a pilot any unlicensed person, or any licensed person acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any pilot licensed and qualified to act as such within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of such ship or vessel, or have made a signal for that purpose, shall forfeit for every such offence double the amount of the sum which would have been legally demandable for the pilotage of such ship or vessel, and shall likewise forfeit for every such offence an additional penalty of 5*l.* for every fifty tons burthen of such ship or vessel, if the corporation of Trinity House of Deptford Strond, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said lord warden for the time being, or his lieutenant for the time being, as to cases in which the Cinque-Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing."

The master is not liable to the penalty for refusing to employ a pilot, unless the pilot produces his licence as required by this section, although it is not demanded. (*Hammond* v. *Blake*, 10 *B. & Cres.* 424; 5 *M. & Ry.* 361, *S. C.*)

The master of a vessel, having on board a licensed pilot appointed by the Trinity House of Newcastle-upon-Tyne under the local act, 41 Geo. III. c. lxxxvi., s. 6, is not entitled to the protection of this section. (*Dods* v. *Embleton*, 9 *D. & R.* 27.)

A vessel had to deliver part of her cargo at the London Docks, and part at a wharf higher up the river. She went to the docks under the charge of a pilot, who left her there, where she remained some time without discharging any of her cargo, as the part to be left at the wharf was uppermost. She then went under the charge of another pilot up the river to the wharf, and by the neglect of the pilot ran down a barge:—It was held, that, under the 55th section, the pilot alone was answerable, and not the owner, as they were bound to have a pilot on board at the time, and that it was not a mere change of mooring. (*M'Intosh* v. *Slade*, 6 *B. & C.* 657; 9 *D. & R.* 738, *S. C.*)

Case against the owner of a vessel, for an injury done by her in running foul of the plaintiff's barge. Plea, that, at the time of the injury, the vessel was being conducted, and was navigating the river Thames, under the conduct of a licensed pilot in charge of the vessel, under and in pursuance of the provisions of the 6 Geo. IV. c. 125; and that the damage happened to the plaintiff by the default, incompetency, and incapacity of such pilot. Replication, that, before the said time when, &c., the vessel had, on completing a voyage from India, been brought by a licensed pilot into the St. Katherine's Dock; and that, having there discharged her cargo, she was, just before, and at the said time when, &c., being removed and in the course of removal, for the purpose of going out

of that dock to a certain dry dock in the port of London, to be repaired, and that the said vessel was not, at the said time when, &c., otherwise navigating or passing upon the said river Thames:—Held, first, that the circumstance stated in the replication brought the case within the exception in the 63rd section of the act, and that the owner was not bound to employ a pilot. Secondly, that the words "wanting a pilot," in the 72nd section, are not to be confined to such vessels as are, by the provisions of the act, bound to take a pilot, but are to be construed as applying to any vessel, the master or owner of which thinks fit to require one. Thirdly, that, inasmuch as under the 72nd section the pilot could not lawfully refuse to go on board and take charge of any vessel wanting a pilot when required by the owner to do so, he must be considered, when so required and employed, as acting under some of the provisions of the act, and not as the private servant of the owner; and, therefore, that the owner was protected by the 55th section of the act from his *primâ facie* liability in respect of the injury occasioned by the act of the pilot, whilst he was so employed by the owner. (*Lucey* v. *Ingram*, 6 *Mee. & W.* 302.)

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Where, in an action on the case for negligently running foul of the plaintiff's vessel, the defence was that the defendant's vessel being at the time on the point of entering Plymouth harbour was under the management of a pilot, although evidence was adduced to show that in point of fact a pilot had come on board the vessel shortly before the accident happened, yet it is a question of fact for the jury to determine whether, at the time of the accident, the defendant's vessel was under the direction of the pilot or not. (*Calls* v. *Herbert*, 3 *Stark.* 12.)

By the prior general Pilot Act, 52 Geo. III. c. 39, s. 30, an owner and master of a vessel was in no case answerable for an accident occasioned by another ship, provided he had a pilot on board. (*Bennet* v. *Moita*, 1 *Moore*, 4; 7 *Taunton*, 258; *Holt*, 359; *and see Fletcher* v. *Braddick*, 2 *N. R.* 182.) And that act did not confine the exemption to loss or damage happening to the piloted ship and cargo, but extended to damage done to that ship by others. (*Ritchie* v. *Bowsfield*, 7. *Taunt*, 309.) But it did not apply to vessels having on board pilots appointed for other places than those expressly named in the preamble or provisions of that act. (*Att.-Gen.* v. *Case*, 3 *Price*, 302.) Where that act did apply, the crown was equally bound with the subject, although not named. (*Att.-Gen.* v. *Case*, 3 *Price*, 302.)

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

Sect. 59. "That, for and notwithstanding any thing in this act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers, and coming up either * by the North Channel, but not otherwise); or of any Irish trader using the navigation of the rivers Thames and Medway; or of any ship or vessel employed in the regular coasting trade of the kingdom; or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof; or of any ship or vessel not exceeding the burthen of sixty tons, and having a British register, except as hereinafter provided; or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any act or acts of parliament, or by any charter or charters for the appointment of pilots; shall and may lawfully, and without being subject to any of the penalties by this act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot, or other person or persons, than the ordinary crew of the said ship or vessel."

* *Sic.*

His majesty in council may authorize ships not

Sect. 60. "From and after the passing of this act, it shall and may be lawful for his majesty, by and with the advice of his privy council,

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

exceeding 60 tons burthen to be conducted without pilots, as British ships of the like burthen.

or by any order or orders in council, to permit and authorize ships and vessels not exceeding the burthen of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this act imposed on British ships and vessels not exceeding the like burthen."

Masters not liable to penalties for employing unlicensed persons whilst ship in distress.

Sect. 61. "Nothing in this act contained shall extend, or be construed to extend, to subject the master or owner of any ship or vessel to any of the penalties of this act, for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured, any thing herein contained to the contrary thereof in anywise notwithstanding."

Master or mate being owner or part owner, and residing at Dover, &c., may pilot his own ship up or down the Thames or Medway.

Sect. 62. "Nothing in this act contained shall extend, or be construed to extend, to subject to any penalty the master or mate of any ship or vessel, being the owner or a part owner of such ship or vessel, and residing at Dover, Deal, or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports."

Ships brought into any port by pilots may be removed by the master, &c., for certain purposes.

Sect. 63. "When any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this act contained shall extend, or be construed to extend, to subject to any penalty the master or mate, or other person belonging to such ship or vessel, and having the command thereof, or, if in ballast, any person or persons appointed by any owner, or master or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports, for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel." (*See Lucey* v. *Ingram*, 6 *M. & W.* 302, *ante*, 1054.)

Penalty for reporting to pilots a false account of a vessel's draught of water, or altering the marks denoting such draught.

Sect. 64. "Every master, or other person, having the command for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting, to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of the pilotage to the pilot entitled thereto, double the amount of such pilotage; and any master or other person, having the command for the time being of any ship or vessel, or having any interest, share, or property therein, who shall fraudulently alter any marks on the stem or stern post thereof, denoting the draught of water, or shall be privy and consenting thereto, shall for any such offence forfeit and pay the sum of 500*l.*

Description of pilot to be on his licence, &c.

Sect. 65. "A particular description of the person of every pilot shall be written in or upon or endorsed on the back of his licence; and every captain or master or other person having the command of a ship or vessel shall, on receiving a pilot on board, inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master or other person is hereby required forthwith to transmit a copy of such licence to the corporation or other authority by whom such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence as may lead to the discovery of the offender."

No pilot shall act until his licence has been registered, nor without producing it.

Sect. 66. "No person shall take charge of any ship or vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, until his licence shall have been registered by the principal officers of the Custom-house of the place at or nearest to which such pilot shall reside, (which officers are hereby required to register the same without fee or reward,) nor without having his licence at the time of his so acting in his personal custody, and producing the same to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot, or to whom he shall offer his services, on pain of forfeiting a sum not ex-

ceeding 30*l.*, nor less than 10*l.*, for the first offence; and for the second or any subsequent offence, a sum not exceeding 50*l.*, nor less than 30*l.*; and upon further pain, as to any person licensed as aforesaid, of forfeiting his licence or being suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived, either for the first, second, or any subsequent offence."

8. *The Pilot Act, &c.*

6 Geo. IV, c. 125.

Licences to be delivered up when required, and on death of a pilot his licence shall be returned to the corporation or authority that granted it.

Sect. 67. "Every pilot, licensed or to be licensed as aforesaid, shall, at all times when thereunto required, produce or deliver and yield up his licence to the corporation or other authority by which the same was granted; and that on the death of any such pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall without wilful delay transmit such licence to the corporation or other authority by which the same was granted, on pain of such pilot, executor, administrator, or other person forfeiting for any neglect therein, a sum not exceeding 20*l.* nor less than 40*s.*"

Pilots keeping public houses, &c. (unless authorized) or offending against the revenue laws, &c. shall forfeit their licences or be suspended.

Sect. 68. "From and after the passing of this act, if any pilot, licensed by virtue of this act, or otherwise duly licensed, shall keep, or be concerned in keeping, either by himself or any agent or servant, or other person, or shall in any way be interested in the keeping of any public house or tavern or place of public entertainment, or in the selling of any wine or spirituous liquors, or tobacco or tea (unless such pilot shall have kept or been concerned or interested in the same before the 1st day of March, 1808, and shall be duly authorized by the corporation, or other authority under which such pilot shall act, to continue in such business or employment; or if any pilot, licensed as aforesaid, shall be convicted of any offence against any law or laws relating to the revenues of customs or excise, or shall be concerned in or shall wilfully connive at any indirect practices or frauds against the revenues of customs or excise, or shall procure, abet, connive at, or participate in, any destruction, spoil, or concealment, fraud, axaction, or corrupt practice, relating to ships or vessels, or persons in distress at sea, or by shipwreck, or relating to the tackle, apparel, or furniture, or the cargoes of such ships or vessels, or relating to the crew or passengers belonging thereto, or the monies, goods, or chattels of any of them, then and in every such case every pilot shall (over and above all other punishments, mulcts, and penalties for such offences), be adjudged to forfeit his licence, or shall be suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived."

Pilots suspended or adjudged to have forfeited their licences, liable to penalty for acting.

Sect. 69. "If any person, suspended or adjudged to have forfeited his licence as a pilot, shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel as a pilot, such person shall be liable to all such penalties, to be recovered and applied in like manner and form as are provided by this act, against any person who shall pilot or conduct any ship or vessel without ever having been licensed as a pilot."

Licensed pilots may supersede unlicensed ones.

Sect. 70. "It shall be lawful for any licensed pilot within the limits of his licence, and the extent of his qualification therein expressed, to supersede in the charge of any ship or vessel any person not licensed to act as a pilot, or not licensed so to act within such limits, or acting beyond the extent of his qualification; and every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits in which such ship or vessel shall actually be, or beyond the extent of his qualification, as expressed in his license, after any pilot, duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding 50*l.* nor less than 20*l.*"

Penalty on unlicensed persons acting as pilots.

Where a person selects the course of a ship and takes the management of her for the purpose of directing her in that course, he is in the charge

8. *The Pilot Act, &c.*

Geo. IV. c. 125.

or conduct of the vessel within the meaning of this section. The master of a ship is not, however, precluded by it from employing any moving power, as for instance, steam, or other power *bonâ fide* used as a moving power; if upon the party applying such power necessarily devolves the selection of the ship's course, and the charge or conduct of her in that course. (*Beilby* v. *Scott*, 7 *Mee. & W.* 93.)

The penalty imposed by this section may be sued for by a common informer, and is within the second head of the 76th section. The consent of the Trinity House or lord warden is necessary only in the case of pilots licensed by them, but their consent is not required with reference to pilots not within their jurisdiction. (*Id.*)

A conviction under this section for continuing in charge of a ship after a licensed pilot has offered to take charge, must shew, on the face of it, that the defendant knew of the offer; for it is not enough to describe the offence in the words of the statute creating it, without adding facts to shew that the defendant was a party to it. (*Chaney* v. *Payne*, 1 *Ad. & E., N. S.* 72; 1 *Gale & D.* 348; 6 *Dowl.* 281, *S. C.*)

But it is not necessary to state the consent in writing of the lord warden or corporation of the Trinity House to the proceedings; for the form of conviction given by the statute, does not mention it. (*Id.*)

When unlicensed persons, &c. may act as pilots.

Sect. 71. "For and notwithstanding any thing in this act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this act imposed, assume, or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where and so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for the master of such ship or vessel to avail himself of the best assistance which at the time could be procured."

Penalty on pilots who decline to go off to or take charge of vessels, or who shall quit same.

Sect. 72. "Every pilot licensed or to be licensed as aforesaid, who shall, when not actually engaged in his capacity of pilot, refuse or decline or wilfully delay to go off to or on board of, or to take charge of any ship or vessel wanting a pilot, and within the limits specified in his licence, and of which he shall be qualified to take charge, upon the usual signal for a pilot being displayed from such ship or vessel, or upon being required so to do by the captain, or by any commissioned or warrant officer of or belonging to such ship or vessel (if the same shall be in his majesty's service), or by the master or other person having the command of such ship or vessel, or by any person or persons interested therein as principal or agent (if the same shall not be in his majesty's service), or upon being required so to do in either of the cases, aforesaid, by any officer of the corporation or society to which such pilot shall belong, or by any principal officer of his majesty's customs (unless in any of the cases aforesaid), it shall be unsafe for such pilot to obey such signal, or comply with such requisition, or he shall be prevented from so doing by illness or other sufficient cause to be shown by him in that behalf; and every pilot licensed or to be licensed as aforesaid, who shall on any frivolous pretext quit any ship or vessel, or decline the piloting thereof, after he has been engaged to pilot the same, or after going alongside thereof, before the service shall have been performed for which he was hired, and without leave of the captain of such ship or vessel (if in his majesty's service), or of the master or other person having the command of such ship or vessel (if not in his majesty's service), shall forfeit for every such offence any sum not exceeding 100*l.*, nor less than 10*l.*, and shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed." (*See Lucey* v. *Ingram*, 6 *M. & W.* 302, *ante*, 1054.)

Penalty on pilots for employing or requiring the em-

Sect. 73. "In case any pilot, licensed or to be licensed as aforesaid, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel, to employ or make use of

any boat, anchor, cable, hawser, or any other matter or thing in or for the service or pretended service of such ship or vessel beyond what shall actually and *bonâ fide* be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expence of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever, then and in every such case the person so offending shall forfeit and pay a sum not exceeding 50*l.*, nor less than 10*l.*, and also shall be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom he was licensed."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

ployment of any boat, &c., beyond what is necessary, thereby, to increase expense.

Sect. 74. "In case any pilot, licensed or to be licensed as aforesaid, shall lend his licence to any unlicensed person to assist him in acting or claiming to act as a licensed pilot, or in case any such licensed pilot, or any person not being a pilot, but acting under pretext or colour of being a pilot, shall by drunkenness render himself incapable of conducting any ship or vessel, or shall wilfully or negligently run any ship or vessel on shore, or loose or injure the same, or the tackle or furniture thereof, or shall wilfully and knowingly conduct, lead, decoy, or betray any ship or vessel into danger in any manner not already provided against by any statute or statutes, or shall unnecessarily or improperly cut any cable or cables of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly; or if any such person shall by wilful misrepresentation of any circumstances upon which the safety of any ship or vessel shall appear materially to depend, for the time being, obtain or endeavour to obtain the charge and conduct of any such ship or vessel, then and in every such case the person so offending, or who shall aid in, procure, abet, or connive at the committing of any such offence or offences, shall, besides being liable to damages at the suit of the party grieved, forfeit, and pay a sum not exceeding 100*l.*, nor less than 20*l.*; and if the person so offending shall be a pilot, he shall also be liable to be deprived of his licence, or suspended from acting as a pilot at the discretion of the corporation or other authority by whom his licence was granted."

Penalty for lending licence, and for drunkenness, and for conducting any vessel into danger, or injuring the same, or obtaining charge thereof by misrepresentation.

Sect. 75. "And whereas the dock master or dock masters appointed by divers dock companies in the port of London, under and by virtue of divers acts of parliament, have power and authority to direct the mooring and unmooring, moving or removing of ships and other vessels, within certain distances from the entrances out of the river Thames into the docks of such companies respectively; be it therefore enacted, That from and after the passing of this act, if any pilot having the charge or direction of any ship or vessel within such distances from the respective entrances into the said docks respectively from the river Thames, and either intended to go into or having recently come out of the docks of the said companies respectively, shall neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot by the said dock master or dock masters respectively, under and by virtue of and agreeably to the powers vested in him and them by any act or acts of parliament, touching or relating to the mooring, unmooring, moving, or removing of such ships or vessels so being under the charge or direction of such pilot as aforesaid, then and in every such case, every pilot so offending shall forfeit and pay a sum not exceeding 50*l.*, nor less than 20*l.*; and every such pilot shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation, or other authority by whom such pilot was licensed."

Penalty on pilots for not obeying orders of dock masters.

Sect. 76. "All fines, penalties, or forfeitures hereinbefore or hereinafter imposed by this act, or by any of the bye-laws, rules, orders, regulations, or ordinances hereby directed to remain in force, or hereinafter to be made under the authority of this act, which shall exceed the sum of 20*l.* (the manner of levying whereof shall not by this act be otherwise expressly provided for), and likewise all fines, penalties, or forfeitures imposed as

How penalties above 20*l.* may be recovered.

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

aforesaid (the manner of levying which shall not by this act be otherwise expressly provided for), in cases where the lowest penalty recoverable not being greater than 20*l.*, and the largest penalty recoverable being greater than 20*l.*, the party prosecuting shall proceed in respect thereof for a sum greater than 20*l.*, with the written consent of the corporation of Trinity House of Deptford Strond, or of the said lord warden or his lieutenant for the time being respectively (as the case may be), shall and may be recovered with full costs of suit, by action of debt, bill, plaint or information in any of his majesty's courts of record at Westminster, to be commenced within twelve calendar months next after such offence or offences shall be committed, or within such other time as is hereinafter in that behalf directed; the venue in which said action, bill, plaint, or information shall and may, at the option of the plaintiff or informant, be laid, and the said action, bill, plaint, or information tried either in the county of Middlesex or the City of London, or else in such county or place wherein the offence or offences shall have been committed, and no essoign, protection, wager of law, or any more than one imparlance, shall be allowed; and in any such case or cases it shall be lawful to sue for the largest penalty or penalties recoverable in that behalf, and the jury giving the verdict shall and may award either such largest penalty or penalties, or any other smaller sum or sums of money, not less than the sum specified as the lowest penalty recoverable in that behalf."

How penalties not exceeding 20*l.* may be recovered.

Sect. 77. "All fines, penalties, or forfeitures hereinbefore or hereinafter imposed by this act, or by any of the bye-laws, rules, orders, regulations, or ordinances hereby directed to remain in force, or hereafter to be made under the authority of this act, and which shall not exceed 20*l.*, (the manner of levying whereof shall not by this act be otherwise expressly provided for;) and likewise all fines, penalties, or forfeitures imposed as aforesaid (the manner of levying which shall not by this act be otherwise expressly provided for), in cases where the lowest penalty recoverable, not being greater than 20*l.*, and the largest penalty recoverable being greater than 20*l.*, the party prosecuting shall proceed in respect thereof for any sum not exceeding 20*l.*, with such written consent as aforesaid, shall and may be levied and recovered within six calendar months after the offence or offences committed, or within such other times as is hereinafter in that behalf directed, before any justice or justices of the peace for the county, city, division, or place where the offence or offences shall be committed; or if committed by any pilot, then before any justice or justices of the peace for the county, city, division, or place aforesaid, or before any justice or justices of the peace, or any magistrate or magistrates of the city, town, or port to which such pilot shall belong; or if committed by any owner or master of any ship or vessel, before any justice or justices of the peace for the county, city, division, or place where the offence or offences shall have been committed, or before any justice or justices of the peace, or any magistrate or magistrates of the county, city, town, or port at which such owner or master shall reside, or to which the ship of such owner or master shall belong; or if committed on any part of the sea from Orfordness to the mouth of the river Thames, or from Dungeness to the mouth of the river Thames, or upon the rivers Thames or Medway, then only before some justice or justices of the peace of the counties of Kent, Surrey, Essex, or Middlesex, or before some magistrate or magistrates of the City of London; and all and every the justice and justices, magistrate and magistrates aforesaid, is and are hereby empowered and required, upon complaint to him or them made, to grant a warrant to bring before him or them such offender or offenders at the time or place in such warrant specified; and if on conviction of the offender or offenders respectively on his, her, or their confession, or on the evidence of any one or more credible witness or witnesses upon oath, (which oath such justice or justices, magistrate or magistrates, is and are hereby empowered to administer,) such fine, penalty, or forfeiture shall not be forthwith paid, it shall and may be lawful to and for such jus-

tice or justices magistrate or magistrates, to levy the penalty by distress, and for want of distress to commit every such offender or offenders to the common gaol or house of correction for the county, city, or place where such offender or offenders shall be convicted, there to remain without bail or mainprize for any time not exceeding six calendar months, nor less than twenty-one days, unless such fine, penalty, or forfeiture, and all reasonable charges attending the recovery thereof, shall be sooner paid: Provided always, that in case the said respective periods of twelve calendar months and six calendar months, or either of them, within which fines, penalties, or forfeitures are to be sued for as aforesaid, shall in any case or cases elapse and run out before any action or prosecution hereby authorized and directed shall have been commenced for the recovery of such fines, penalties, or forfeitures; and if it shall in manner hereinafter mentioned be made to appear, as soon after the circumstances of the case shall reasonably admit, that the commencement of the action or prosecution has been delayed by reason of the absence of any party or parties whether offending or complaining, or by the absence of any necessary witness or witnesses, then upon such circumstances being stated by affidavit in writing, made before any judge of any of his majesty's courts of record at Westminster, it shall thereupon be lawful for any such judge or judges to order or authorize the commencement of such action or prosecution within such further time as such judge shall think fit to limit in that behalf; and in such case the action or actions, prosecution or prosecutions so ordered or authorized shall and may be commenced and prosecuted within the time or respective times so limited, in like manner and with the like effect in all respects as if such prosecutions had been commenced and prosecuted within the said respective periods of twelve months and six months hereby limited."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Sect. 78. "In case any person against whom a warrant shall be issued by any justice or justices, magistrate or magistrates, before or after any conviction for any offence against this act shall escape, go into, or reside, or be in any other county, riding, division, city, liberty, town, or place not within the jurisdiction of the justice or justices, magistrate or magistrates granting such warrant, it shall be lawful for any justice of the peace of the county, riding, division, city, liberty, town, or place into which such person shall escape, either before or after conviction, and they and every of them are hereby required upon proof made upon oath of the hand-writing of any justice or justices, magistrate or magistrates, granting such warrant to endorse his or their name or names on such warrant, and the same when so endorsed shall be sufficient authority to all peace officers to execute such warrant in such other county, riding, division, city, town, or place, out of the jurisdiction of the justice or justices granting the said warrant; and any justice or justices respectively, on the offender being apprehended and brought before him or them, within their respective jurisdictions, may proceed to hear and determine the complaint, in the same manner as if it had originally arisen within his or their respective jurisdictions, or may direct the offender to be carried, and such offender shall accordingly, in that case, be carried to or before the justice or justices who granted the original warrant, to be dealt with according to law."

Justice of county into which an offender escapes may endorse original warrant, which shall authorize peace officers to execute it.

Sect. 79. "If any person who shall be summoned as a witness upon any complaint or information before any justice or justices of the peace, magistrate or magistrates, shall refuse or neglect to appear at the time by such summons appointed, having no just cause for such neglect or refusal, it shall be lawful for such justice or justices, magistrate or magistrates, on proof of such summons having been served, and of a tender of reasonable expenses having been made to such person on his being served with such summons, to issue a warrant, under his hand and seal or their hands and seals, to bring such person before him or them; and if on appearance, or on being brought before any justice or justices, magistrate or magistrates, such person shall refuse to be examined on oath concerning

Witnesses not appearing may be committed.

3. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

the premises, without having some just cause for such refusal, it shall be lawful for such justice or justices, magistrate or magistrates, by warrant under his hand and seal, or their hands and seals, to commit such person to the house of correction of the county, city, division, or place where any such person shall be apprehended, there to remain for any time not exceeding six weeks, nor less than ten days, as any such justice or justices, magistrate or magistrates, shall direct."

Persons convicted of giving false testimony guilty of perjury.

Sect. 80. "Every person who in any examination upon oath, under the provisions of this act, shall wilfully give false testimony, or a false account of the matter sworn to by such person, shall be liable to be prosecuted for the same by indictment, and if duly convicted of false swearing in the premises, shall be subject and liable to such punishments, disqualifications, and disabilities, as any person would be subject or liable to for wilful and corrupt perjury, in any other case by the laws and statutes of the realm."

Sect. 81. "And for the more easy and speedy conviction of offenders against this act, be it further enacted, That all and every justice and justices of the peace, magistrate or magistrates, before whom any person shall be convicted of any offence against this act, or against any bye-law, rule, regulation, or order hereby directed to remain in force, or hereafter to be made under the authority hereof, shall and may cause the conviction to be drawn up according to the following form, or in words to the like effect; *videlicet*,

Form of conviction.

'*Be it remembered, that on the day of , in the year of our Lord , A. B. is convicted before me* [or *us*], *one* [or *two*, as the case may be] *of his majesty's justices of the peace for the* [here specify the offence, and the time and place when and where committed, as the case may be,] *contrary to an act passed in the sixth year of the reign of King George the Fourth, intituled* [here insert the title of this act], *and I* [or, *we*] *do adjudge that the said* [insert the offender's name] *hath therefore forfeited the sum of* [here insert the penalty]. *Given under my hand and seal* [or, *our hands and seals*] *the day and year first above written.*'

Certiorari.

And no *certiorari*, or other writ or process for the removal of any such conviction or any proceedings thereon, into any of his majesty's courts of record at Westminster, shall be allowed or granted."

Appeal.

Sect. 82. "It shall and may be lawful to and for any person or persons so convicted by any justice or justices of the peace, magistrate or magistrates before mentioned, of any offence or offences against this act, or against any bye-law, rule, order, regulation, or ordinance hereby directed to remain in force, or hereafter to be made under the authority hereof, within three calendar months next after such conviction, to appeal to the justices of the peace assembled at the general quarter sessions holden for the county, city, or place where the matter of appeal shall arise, first giving ten days' notice of such appeal to the person or persons appealed against, and of the matter thereof, and within fourteen days next after such notice entering into a recognizance before some justice of the peace for such county, city, or place, with sufficient sureties conditioned to try such appeal, and for abiding the determination of the court therein; and such justices so assembled shall, upon due proof of such notice having been given, and recognizance entered into, hear and determine the matter of such appeal, and may either confirm or quash and annul the said conviction, and award such costs to either party as to them shall seem just and reasonable (and the decision of the said justices therein shall be final, binding, and conclusive); and no proceeding to be had or taken in pursuance of this act shall be quashed or vacated for want of form only, or be removed by *certiorari* or any other writ or process whatsoever, into any of his majesty's courts of record at Westminster or elsewhere; any law or statute to the contrary thereof in anywise notwithstanding."

Certiorari.

Habeas Corpus.

The writ of habeas corpus is not taken away by this act, and therefore the defendant is entitled to avail himself of defects on the face of the commitment. (*Reg.* v. *Chaney*, 6 *Dowl.* 281, 1 *W. W. & H.* 54, *S. C.*)

But the writ of *certiorari* is, and therefore unless the crown remove the conviction the court will consider the commitment although defective as a true recital of the conviction. (*Id.*)

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Application of penalties.

Sect. 83. "One-third of all fines or penalties to be levied in pursuance of this act, or under any bye-law, rule, order, regulation, or ordinance hereby directed to remain in force, or hereafter to be made under the authority of this act, by whomsoever incurred, (save and except such fines or penalties, the application whereof shall by this act be otherwise expressly provided for,) shall go to the person who shall inform or sue for the same, and the remainder of all such fines or penalties shall be carried to and applied to the purposes of the said fund belonging to the said corporation of Trinity House, called the Pilots' Fund, in case such fines or penalties shall be incurred by pilots licensed by the said corporation, or by any person or persons in relation to any matters wherein such last-mentioned pilots shall be in anywise concerned; and in case such fines or penalties shall be incurred by pilots belonging to the fellowship of the Cinque Ports, or by pilots under any other jurisdictions or authorities, or by any other person or persons in relation to any matters wherein such pilots respectively shall be in anywise concerned, then the remaining two-thirds of such last-mentioned fines or penalties shall be carried to and applied to the purposes of such fund as hath been or shall be created for the relief of such indigent pilots belonging to the said fellowship, or such other jurisdictions or authorities respectively, as shall become incapable of discharging their duty from advanced age, or from any accident or infirmity."

Limitation of actions.

Venue.

General issue.

Treble costs.

Sect. 84. "If any suit or action shall be brought or prosecuted against any person or persons for anything done or to be done in pursuance of this act, in every such case the action or suit shall be commenced within six calendar months next after the fact committed, and not otherwise, and shall be laid or brought in the county, city, or place where the cause of action arises, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue not guilty, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time limited for bringing the same, then the jury shall find for the defendant or defendants; and if the plaintiff or plaintiffs shall become nonsuited, or suffer a discontinuance of his or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have treble costs, and shall have such remedy for the same as any defendant or defendants hath or have for costs of suit in other cases of law." (*See* now, as to double costs, 5 & 6 Vict. c. 97, *title "Justices,"* Vol. III.)

Regulations in any act relating to pilotage in any river, &c., and which refer to repealed statutes, to continue in force notwithstanding such repeal.

Sect. 85. "All acts of parliament, and all clauses, provisions, powers, authorities, regulations, penalties, and forfeitures contained in any act, which in any manner relate to the regulation of pilots or pilotage within any river, port, or harbour, or within any local limits specified in any such act, clause, or provision, and in which any reference is made to the said acts passed in the forty-eighth and fifty-second years of the reign of his said late majesty king George the Third as aforesaid, or either of them, or in any manner apply thereto, or vary or alter any of the provisions thereof as to pilots or pilotage within any such limits, shall continue in full force, notwithstanding the repeal of the said acts of the forty-eighth and fifty-second years aforesaid, and shall be deemed to refer and apply to this act, and shall be so construed as if the same were particularly referred to in this act; any thing in this act to the contrary notwithstanding."

Act not to extend to queen's ships.

Sect. 86. "Nothing in this act contained shall extend or be construed to extend to any ships or vessels belonging to his majesty, his heirs and successors, as to their being compelled to take pilots on board."

8. *The Pilot Act, &c.*

6 Geo. IV. c. 125.

Nor to affect jurisdiction of Court of Loadmenage, or Admiralty Court.

Sect. 87. "Nothing herein contained shall extend to affect or impede the jurisdiction of the court of Loadmanage, as far as respects the pilots appointed under the authority of the said court; and provided also, that nothing in this act contained shall extend or be construed to extend to affect or impair the jurisdiction of the High Court of Admiralty."

Nor to prejudice rights of City of London.

Sect. 88. "Nothing in this act contained shall extend or be construed to extend to prejudice or take away any right, property, authority, or jurisdiction of the mayor of the City of London, or of the mayor and commonalty and citizens of the City of London, to, in, and upon the river Thames aforesaid."

Nor to affect districts having separate jurisdictions.

Sect. 89. "Nothing in this act contained shall extend or be construed to extend to the taking away, abridging, defeating, impeaching, or interrupting of any grants, liberties, franchises, or privileges heretofore granted by any charters or acts of parliament to the pilots of the Trinity House of the town of Kingston-upon-Hull, or the Trinity House of Newcastle-upon-Tyne, or to give any authority to the corporation of the Trinity House of Deptford Strond, within any ports or districts having separate jurisdictions in matters of pilotage, under any act of parliament or charter, or to alter or repeal any provisions contained in any act or acts of parliament relating to the pilots of any ports or districts in relation to which particular provision shall have been made in any act or acts of parliament as to the pilots or pilotage, or to the pilotage within the limits prescribed by any act or acts of parliament relating to pilotage for such ports, or to the burthen of vessels navigating to or from such ports."

Provisions of former acts for preservation of sea-marks and beacons to extend to all vessels appointed to exhibit lights, &c.

Sect. 90. "All provisions, clauses, penalties, and forfeitures, contained in an act passed in the eighth year of the reign of queen Elizabeth, or any other act or acts made and in force for the preservation of sea-marks and beacons, shall extend and be construed to extend to all vessels duly appointed to exhibit lights therein for the preservation of ships and vessels at sea, and to all persons removing, injuring, or destroying such vessels or lights, which offences may be laid and tried in any county in England."

Penalty for riding by, &c. such vessels, or any buoy or beacon.

Sect. 91. "Every person who shall ride by, make fast to, or remove, or wilfully run down, or run foul of any vessel, appointed or placed to exhibit lights, or any buoy or beacon belonging to the said corporation of Trinity House of Deptford Strond, or belonging to or placed by any other corporation having lawful authority to place the same, shall, besides being liable to the expense of replacing or making good any damage occasioned thereby, forfeit for every such offence any sum not exceeding 50*l.*, nor less than 10*l.*, to be recovered by action of debt, bill, plaint, or information in which no essoign, protection, privilege, wager of law, or more than one imparlance shall be granted or allowed; one-third of which said penalty shall go to the persons who shall inform or sue for the same, and the remainder of which said penalty shall go to the said corporation of Trinity House of Deptford Strond, or other the corporation to which such vessel, buoy, or beacon shall belong, or by which the same shall have been placed as aforesaid, as the case may be, to be applied to the charitable purposes of the said corporations respectively."

Public act.

Sect. 92. "This act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, by all judges, justices, and others, without being specially pleaded."

The act then gives the following schedules:—

SCHEDULE (A.) See it, *post*, 1066, 1067.

SCHEDULE (B.)

Oath to be taken by the Master and Wardens of the Society of Cinque-Port Pilots.

"*I, A. B., do swear that I will diligently and impartially examine and inquire into the capacity and skill of , in the art of piloting ships and vessels over the flats and round the Long Sand Head, and up the rivers of Thames and Medway, and into Ramsgate, Dover, Sandwich, and Margate harbours, and also upon the coasts of Flanders and Holland; and will make true and speedy return thereof to the lord warden of the Cinque-Ports for the time being, or his deputy, without favour, affection, fee, or reward.*

"*So help me God.*"

SCHEDULE (C.)

Oath to be taken by Sub-Commissioners of Pilotage.

"*I, A. B., do swear, that I will diligently and impartially examine into the capacity and skill of , in the art of piloting ships and vessels into the roadstead, port, or harbour, and upon the coasts following:* videlicet [here describe the limits within which the person examined is intended to act as pilot]; *and will make true and speedy return thereof to the corporation of Trinity House of Deptford Strond, without favour, affection, fee, or reward, other than such fee or reward as is allowed by the bye-laws or regulations duly established in that behalf.*

"*So help me God.*"

SCHEDULES REFERRED TO IN THIS ACT.—SCHEDULE (A.)

TABLE (A.)—Table of the Rates of Pilotage to be demanded and received by Pilots, licensed by the Corporation of Trinity House of Deptford Strond, for Piloting Ships and Vessels within the Limits in the said Table mentioned.

FROM	TO	7 Feet and under.	8 Feet.	9 Feet.	10 Feet.	11 Feet.	12 Feet.	13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Sea, Orfordness, the Downs, Hoseley Bay, and *vice versâ*	Nore or Warps	3 13 6	4 2 9	4 12 0	5 1 3	5 5 9	6 5 0	6 13 6	7 7 3	7 16 6	8 14 9	9 8 6	10 17 0	11 10 0	12 17 6	14 5 3	16 11 3	18 8 0
	Gravesend, Chatham, Standgate Creek, or Blackstakes	4 12 0	5 7 9	6 3 3	6 18 0	7 11 9	8 5 6	8 19 6	9 13 3	10 7 0	11 0 9	11 14 6	14 1 6	16 13 0	19 6 6	21 5 0	23 3 9	25 2 3
	Long Reach	4 16 6	5 12 3	6 8 0	7 2 6	7 18 3	8 14 9	9 8 6	10 6 0	10 16 3	11 10 0	13 3 6	15 9 0	18 11 9	21 5 0	23 0 0	24 16 9	26 13 6
	Woolwich or Blackwall	5 5 9	6 1 6	6 17 0	7 11 9	8 10 3	9 4 0	10 2 6	11 0 9	11 14 6	12 8 6	14 3 6	16 5 9	19 11 0	22 1 6	24 16 9	27 12 0	—
	Moorings or London Docks	5 16 0	6 9 9	7 3 6	7 17 3	8 19 6	9 13 3	10 11 6	11 10 0	12 8 6	13 2 3	14 14 6	17 0 6	20 10 3	23 4 6	—	—	—
The Nore or Warps, and *vice versâ*	Gravesend, Standgate Creek, or Blackstakes	1 18 9	2 3 3	2 7 0	2 10 6	2 19 9	3 6 3	3 11 0	3 15 6	4 2 9	4 10 3	5 1 3	5 16 0	6 8 9	7 14 6	8 14 0	9 13 3	10 12 6
	Long Reach, or Chatham	2 6 0	2 10 6	2 15 3	2 19 9	3 9 0	3 18 3	4 2 9	4 7 0	4 13 9	5 5 0	5 16 0	6 15 3	8 5 6	9 13 3	10 12 6	11 11 9	12 15 3
	Woolwich or Blackwall	2 15 3	3 1 9	3 8 0	3 13 6	4 2 9	4 10 3	4 19 0	5 8 6	5 16 0	6 4 3	7 2 6	8 3 9	9 4 0	11 11 9	12 11 3	13 16 0	—
	Moorings or London Docks	3 4 6	3 10 9	3 17 3	4 2 9	4 16 6	5 5 9	5 15 0	6 4 3	6 13 6	7 2 6	8 1 0	9 4 0	11 0 9	12 17 6	13 16 0	—	—
Gravesend Reach, and *vice versâ*	Long Reach	0 9 3	0 14 9	1 0 3	1 5 3	1 10 0	1 14 6	1 19 0	2 3 9	2 8 3	2 13 0	2 17 6	3 2 9	3 6 9	3 11 3	4 12 0	5 10 6	—
	Woolwich or Blackwall	1 3 0	1 7 6	1 12 3	1 16 9	2 4 3	2 13 6	3 2 6	3 11 9	3 18 3	4 5 6	4 13 9	5 1 3	6 4 3	7 11 9	8 10 6	9 13 3	—
	Moorings or London Docks	1 7 6	1 14 0	2 0 6	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	7 7 3	8 14 9	—	—	—
	Sheerness, Standgate Creek, or Blackstakes	2 15 3	2 19 0	3 1 9	3 4 6	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	—	—	—
	Chatham	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	8 5 6	—	—	—
Long Reach and *vice versâ*	Woolwich or Blackwall	0 18 6	1 2 0	1 4 9	1 7 6	1 16 9	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 9	5 16 0	6 8 9	8 5 6	9 4 0	—
	Moorings or London Docks	1 7 6	1 11 3	1 14 0	1 16 9	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	7 7 3	9 4 0	—	—
	Sheerness, Standgate Creek, or Blackstakes	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	—	—
	Chatham	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	9 4 0	—	—
Woolwich or Blackwall, and *vice versâ*	Moorings or London Docks	0 18 6	1 2 0	1 4 9	1 7 6	1 10 0	1 12 3	1 16 9	2 1 6	2 6 0	2 10 6	2 15 3	2 19 9	3 4 6	3 9 0	—	—	—
	Sheerness, Standgate Creek, or Blackstakes	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	—	—	—
	Chatham	4 2 9	4 6 6	4 9 3	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	9 4 0	—	—	—

Ships not having British Registers are to pay One-Fourth more than Ships having British Registers, except when such first-mentioned Ships shall be chiefly laden with Corn, or other Provisions, or shall, by any Order of His Majesty's most Honourable Privy Council, be privileged to enter the Ports of this Kingdom, upon paying the same Duties of Tonnage as are paid by British Ships, in which Case such Ships and Vessels, not having British Registers, shall pay the like Rates of Pilotage only as are payable by Ships having British Registers.

For Half a Foot exceeding the above Draughts of Water, the medium Price between the Two Limits.—For intermediate Distances, a proportionate Rate.

For removing a Ship or Vessel from Moorings into a Dry or Wet Dock:—

For a Ship under 300 Tons	£0 15 0
" " 300 to 600	1 1 0
" " 600 to 1000	1 11 6
" " above 1000	2 2 0

In the River Thames, above Gravesend:

For a Boat of a Class carrying an Anchor of above 4 Cwt. with a Corresponding Tow-Line	£2 2 0	Per Trip for the whole Distance from Gravesend to London; and in proportion for any Part of that Distance.
" " Do. " Do. " 2 Cwt.	1 1 0	
" " Do. " Do. " under 2 Cwt.	0 15 0	

And for each Month Serving in these Boats, £2 per Tide.

TABLE (B.)—A Table of the Rates of Pilotage to be demanded and received by Pilots licensed by the Lord Warden of the Cinque Ports and Constable of Dover Castle, or his Lieutenant for the time being, for Piloting Ships and Vessels within the Limits in the said Table mentioned.

FROM	TO	Under 7 Feet.	From 7 Feet to 10 Feet.	11 Feet.	12 Feet.	13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Downs	Nore, Shoerness, Standgate Creek, Gravesend	5 5 0	7 17 6	8 13 3	9 9 0	10 4 9	11 0 6	11 16 3	12 12 0	13 7 9	16 1 3	19 0 0	22 1 0	24 5 0	26 9 2	28 13 3
	Longreach	5 16 0	8 8 6	9 9 0	10 4 9	11 3 0	11 18 10	12 18 3	13 14 6	15 0 9	17 14 4	21 4 2	24 5 1	26 9 2	28 13 3	30 17 4
	Blackwall or London	6 12 3	8 19 6	10 4 9	11 0 6	12 1 6	12 17 3	14 0 4	14 13 6	16 18 9	19 7 5	23 8 3	26 9 2	28 13 3	—	—
Standgate Creek	Gravesend	3 6 2	3 17 0	4 8 2	4 19 6	5 10 3	6 1 3	6 12 3	7 3 3	7 14 4	8 5 4	8 16 4	9 7 4	—	—	—

From the several Rates mentioned in this Table (B.) there shall be deducted 5 per Cent. when the number of Cinque-Port Pilots shall be reduced to 120.

Ships not having British Registers are to pay One-Fourth more than Ships having British Registers; except when such first-mentioned Ships shall be chiefly laden with Corn, or other Provisions, or shall, by any Order of his Majesty's most Honourable Privy Council, be privileged to enter the Ports of this Kingdom, upon paying the same Duties of Tonnage, as are paid by British Ships; in which case, such Ships and Vessels not having British Registers shall pay the like Rates of Pilotage only as are payable by Ships having British Registers.

For Half a Foot exceeding the above Draughts of Water, the medium Price between the Two Limits.

For intermediate Distances, a proportionate Rate.

For putting a Pilot on board, and for Pilotage of Ships and Vessels to the Anchorage in the Downs.*	60 Tons and under 150.	150 Tons and under 250.	250 Tons and under 400.	400 Tons and under 600.	600 Tons and upwards.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From off Dungeness to off Folkestone; the Church bearing N.N.W. by Compass	2 0 0	3 0 0	3 10 0	4 0 0	5 5 0
From off Folkestone to the South Foreland, the Lights in one	1 10 0	2 0 0	2 10 0	3 0 0	4 4 0
From off the South Foreland to the Downs.	1 5† 0	1 5 0	1 10 0	2 0 0	3 3 0

* When the pilot is put on board by a boat from the shore, one-seventh to the pilot, and the remaining six-sevenths to the boat and Crew.

† So in printed act, *sed quære.*

In the River Thames above Gravesend:

	£ s. d.	
For a Boat of a Class carrying an Anchor of above 4 Cwt., with a corresponding Tow-Line	2 2 0	Per Trip for the whole distance from Gravesend to London; and in proportion for any Part of that Distance.
Ditto Ditto 2 Cwt.	1 1 0	
Ditto Ditto under 2 Cwt.	0 15 0	

And for each Man's Service in those Boats, 8s. per Tide.

9. *The Navigation Act.*

IX. The Navigation Act.

3 & 4 Will. IV. c. 54.

The 3 & 4 Will. IV. c. 54, intituled "An Act for the Encouragement of British Shipping and Navigation," [28th August 1833,] reciting the passing of the 6 Geo. IV. c. 109; and that "since the passing of the said act divers acts for the further amendment of the law have been found necessary, and it will be of advantage to the trade and commerce of the country that the said acts should be consolidated into one act;" enacts, "That this act shall commence upon the 1st day of September, 1833, except where any other commencement is herein particularly directed."

Commencement of act.

Ships in which only enumerated goods of Europe may be imported.

Sect. 2. "The several sorts of goods hereinafter enumerated, being the produce of Europe; (that is to say,) masts, timber, boards, tar, tallow, hemp, flax, currants, raisins, figs, prunes, olive oil, corn or grain, wine, brandy, tobacco, wool, shumac, madders, madder roots, barilla, brimstone, bark of oak, cork, oranges, lemons, linseed, rape seed, and clover seed, shall not be imported into the United Kingdom to be used therein, except in British ships, or in ships of the country of which the goods are the produce, or in ships of the country from which the goods are imported."

Places from which only goods of Asia, Africa, or America may be imported.

Sect. 3. "Goods, the produce of Asia, Africa, and America, shall not be imported from Europe into the United Kingdom, to be used therein, except the goods hereinafter mentioned; (that is to say,)

'Goods the produce of the dominions of the emperor of Morocco which may be imported from places in Europe within the Straits of Gibraltar.

'Goods, the produce of Asia or Africa, which (having been brought into places in Europe within the Straits of Gibraltar, from or through places in Asia or Africa within those Straits, and not by way of the Atlantic Ocean) may be imported from places in Europe within the Straits of Gibraltar.

'Goods, the produce of places within the limits of the East India Company's charter, which (having been imported from those places into Gibraltar or Malta in British ships) may be imported from Gibraltar or Malta.

'Goods taken by way of reprisal by British ships.

'Bullion, diamonds, pearls, rubies, emeralds, and other jewels or precious stones.'"

Ships in which only goods of Asia, Africa, or America may be imported.

Sect. 4. "Goods, the produce of Asia, Africa, or America, shall not be imported into the United Kingdom, to be used therein, in foreign ships, unless they be the ships of the country in Asia, Africa, or America, of which the goods are the produce, and from which they are imported, except the goods hereinafter mentioned; (that is to say,)

'Goods, the produce of the dominions of the Grand Seignor, in Asia or Africa, which may be imported from his dominions in Europe, in ships of his dominions.

'Raw silk and mohair yarn, the produce of Asia, which may be imported from the dominions of the Grand Seignor in the Levant Seas, in ships of his dominions.

'Bullion.'"

Manufacture deemed produce.

Sect. 5. "Provided that all manufactured goods shall be deemed to be the produce of the country of which they are the manufacture."

From Guernsey, &c.

Sect. 6. "No goods shall be imported into the United Kingdom from the islands of Guernsey, Jersey, Alderney, Sark, or Man, except in British ships."

Exports to Asia, &c., and to Guernsey, &c.

Sect. 7. "No goods shall be exported from the United Kingdom to any British possession in Asia, Africa, or America, nor to the islands of Guernsey, Jersey, Alderney, Sark, or Man, except in British ships."

Coastwise.

Sect. 8. "No goods shall be carried coastwise from one part of the United Kingdom to another, except in British ships."

Between Guernsey, Jersey, &c.

Sect. 9. "No goods shall be carried from any of the islands of Guern-

sey, Jersey, Alderney, Sark, or Man, to any other of such islands, nor from one part of any of such islands to another part of the same island, except in British ships."

9. *The Navigation Act.*

3 & 4 Will. IV. c. 54.

Sect. 10. "No goods shall be carried from any British possession in Asia, Africa, or America, to any other of such possessions, nor from one part of any of such possessions to another part of the same, except in British ships."

Between British possessions in Asia, &c.

Sect. 11. "No goods shall be imported into any British possessions in Asia, Africa, or America, in any foreign ships, unless they be the ships of the country of which the goods are the produce, and from which the goods are imported."

Imports into British possessions in Asia, &c.

Sect. 12. "No ship shall be admitted to be a British ship unless duly registered and navigated as such; and that every British registered ship (so long as the registry of such ship shall be in force, or the certificate of such registry retained for the use of such ship) shall be navigated during the whole of every voyage, (whether with a cargo or in ballast), in every part of the world, by a master who is a British subject, and by a crew whereof three-fourths at least are British seamen; and if such ship be employed in a coasting voyage from one part of the United Kingdom to another, or in a voyage between the United Kingdom and the islands of Guernsey, Jersey, Alderney, Sark, or Man, or from one of the said islands to another of them, or from one part of either of them to another of the same, or be employed in fishing on the coasts of the United Kingdom or of any of the said islands, then the whole of the crew shall be British seamen."

No ship British, unless registered, and navigated as such.

Sect. 13. "Provided that all British-built boats or vessels under fifteen tons' burthen, wholly owned and navigated by British subjects, although not registered as British ships, shall be admitted to be British vessels, in all navigation in the rivers and upon the coasts of the United Kingdom, or of the British possessions abroad, and not proceeding over sea, except within the limits of the respective colonial governments within which the managing owners of such vessels respectively reside; and that all British-built boats or vessels wholly owned and navigated by British subjects, not exceeding the burthen of thirty tons, and not having a whole or a fixed deck, and being employed solely in fishing on the banks and shores of Newfoundland, and of the parts adjacent, or on the banks and shores of the provinces of Canada, Nova Scotia, or New Brunswick, adjacent to the gulf of St. Lawrence, or on the north of Cape Canso, or of the islands within the same, or in trading coastwise within the said limits, shall be admitted to be British boats or vessels, although not registered, so long as such boats or vessels shall be solely so employed."

But vessels under fifteen tons burthen admitted in navigation upon rivers, &c., although not registered.

Vessels under thirty tons for Newfoundland fishery, &c. need not be registered.

Sect. 14. Provided that "all ships built in the British settlements at Honduras, and owned and navigated as British ships, shall be entitled to the privileges of British registered ships in all direct trade between the United Kingdom or the British possessions in America and the said settlements; provided the master shall produce a certificate under the hand of the superintendent of those settlements, that satisfactory proof has been made before him that such ship (describing the same) was built in the said settlements, and is wholly owned by British subjects; provided also, that the time of the clearance of such ship from the said settlements for every voyage shall be endorsed upon such certificate by such superintendent."

Honduras ships to be as British in trade with United Kingdom and Colonies in America.

Sect. 15. "No ship shall be admitted to be a ship of any particular country, unless she be of the built of such country; or have been made prize of war to such country; or have been forfeited to such country under any law of the same, made for the prevention of the slave trade, and condemned as such prize or forfeiture by a competent court of such country; or be British built (not having been a prize of war from British subjects to any other foreign country); nor unless she be navigated by a master who is a subject of such foreign country, and

Ship of any foreign country to be of the built of, or prize to such country; or British-built, and owned and navigated by subjects of the country.

9. *The Navigation Act.*

3 & 4 Will. IV. c. 54.

by a crew of whom three-fourths at least are subjects of such country; nor unless she be wholly owned by subjects of such country usually residing therein, or under the dominion thereof: Provided always, that the country of every ship shall be deemed to include all places which are under the same dominion as the place to which such ship belongs."

Master and seamen not British, unless natural-born, or naturalized, or denizens, or subjects by conquest or cession, or having served in H. M.'s ships of war.

Sect. 16. "No person shall be qualified to be a master of a British ship, or to be a British seaman within the meaning of this act, except the natural-born subjects of his majesty, or persons naturalized by any act of parliament, or made denizens by letters of denization; or except persons who have become British subjects by virtue of conquest or session of some newly acquired country, and who shall have taken the oath of allegiance to his majesty, or the oath of fidelity required by the treaty or capitulation by which such newly acquired country came into his majesty's possession; or persons who shall have served on board any of his majesty's ships of war in time of war for the space of three years: Provided always, that the natives of places within the limits of the East India Company's charter, although under British dominion, shall not, upon the ground of being such natives, be deemed to be British seamen: Provided always, that every ship (except ships required to be wholly navigated by British seamen) which shall be navigated by one British seaman, if a British ship, or one seaman of the country of such ship, if a foreign ship, for every twenty tons of the burthen of such ship, shall be deemed to be duly navigated, although the number of other seamen shall exceed one fourth of the whole crew: Provided always, that nothing herein contained shall extend to repeal or alter the provisions of an act passed in the fourth year of the reign of his late majesty king George the Fourth, for consolidating and amending the laws then in force with respect to trade from and to places within the limits of the East India Company's charter."

Natives of India not to be British seamen.

One British seaman to twenty tons sufficient to constitute a proper crew.

Foreigners having served two years on board H. M.'s ships during war.

Sect. 17. Provided that, "it shall be lawful for his majesty, by his royal proclamation during war, to declare that foreigners, having served two years on board any of his majesty's ships of war, in time of such war, shall be British seamen within the meaning of this act."

British ship not to depart British port unless duly navigated, &c.

Sect. 18. "No British registered ship shall be suffered to depart any port in the United Kingdom, or any British possession in any part of the world (whether with a cargo or in ballast), unless duly navigated: Provided always, that any British ships, trading between places in America, may be navigated by British negroes, and that ships trading eastward of the Cape of Good Hope within the limits of the East India Company's charter may be navigated by Lascars, or other natives of countries within those limits."

If excess of foreign seamen, penalty 10*l.* for each; except British seamen cannot be procured in foreign ports or in India; or proportion destroyed unavoidably; and certificate produced or proof made.

Sect. 19. "If any British registered ship shall at any time have, as part of the crew in any part of the world, any foreign seamen not allowed by law, the master or owners of such ship shall for every such foreign seaman forfeit the sum of 10*l.*: Provided always, that if a due proportion of British seamen cannot be procured in any foreign port, or in any place within the limits of the East India Company's charter, for the navigation of any British ship; or if such proportion be destroyed during the voyage by any unavoidable circumstance, and the master of such ship shall produce a certificate of such facts under the hand of any British consul, or of two known British merchants, if there be no consul at the place where such facts can be ascertained, or from the British governor of any place within the limits of the East India Company's charter; or, in the want of such certificate, shall make proof of the truth of such facts to the satisfaction of the collector and controller of the customs of any British port, or of any person authorized in any other part of the world to inquire into the navigation of such ship, the same shall be deemed to be duly navigated."

Proportion of seamen may be altered by proclamation.

Sect. 20. "If his majesty shall, at any time by his royal proclamation, declare that the proportion of British seamen necessary to the due navigation of British ships shall be less than the proportion required by this

act, every British ship navigated with the proportion of British seamen required by such proclamation shall be deemed to be duly navigated, so long as such proclamation shall remain in force."

9. *The Navigation Act.*

3 & 4 Will. IV. c. 54.

Sect. 21. Provided that "goods of any sort or the produce of any place, not otherwise prohibited than by the law of navigation hereinbefore contained, may be imported into the United Kingdom from any place in a British ship, and from any place not being a British possession in a foreign ship of any country, and however navigated, to be warehoused for exportation only, under the provisions of any law in force for the time being, made for the warehousing of goods without payment of duty upon the first entry thereof."

Goods prohibited only by navigation law may be imported for exportation.

Sect. 22. "If any goods be imported, exported, or carried coastwise, contrary to the law of navigation, all such goods shall be forfeited, and the master of such ship shall forfeit the sum 100*l.*"

Forfeitures, how incurred.

Sect. 23. "All penalties and forfeitures incurred under this act shall be sued for, prosecuted, recovered, and disposed of, or shall be mitigated or restored, in like manner as any penalty or forfeiture can be sued for, prosecuted, recovered, and disposed of, or may be mitigated or restored, under an act passed in the present session of parliament for the prevention of smuggling." (*See* 3 & 4 Will. IV. c. 53, s. 75, *title*, "*Excise and Customs*," Vol. II. p. 556, 599.)

Recovery of forfeitures.

X. Cordage for Shipping.

By the 25 Geo. III. c. 56, s. 2, no person after the 25th of July, 1785, shall use, in the making of cables, hawsers, or other ropes for the use of shipping, or knowingly sell the same, in the manufacturing whereof there shall be used any hemp, usually known by the name of short chucking, half clean, whale line, or other toppings, cordilla, damaged hemp bought at a public or other sales, or any hemp from which the staple part thereof shall have been taken away by the manufacturer, on pain of forfeiting (if he be the manufacturer thereof, such cable, hawser, or other rope, and treble the value thereof; and the vendor thereof, knowingly (and not being the manufacturer,) shall forfeit treble the value thereof.

Short chucking, &c. not to be used in making cordage for shipping.

By sect. 3 & 4, for better distinguishing the quality of such cables, &c. whenever the same shall be manufactured in whole or in part of any hemp, the use whereof is not prohibited by this act, and the quality whereof shall be inferior to clean Petersburgh hemp, the same shall be deemed *inferior cordage*, and the maker shall distinguish the same by running from end to end of each cable three tarred mark-yarns, spun with turn contrary to that of rope yarn, and also one like tarred yarn in every other rope for the use of shipping; and shall mark or write on a tally to be affixed thereon the word *staple* or *inferior* (as the case shall be), and also his name signed by himself or his attorney, together with the name of the place where manufactured; in default thereof every such manufacturer shall for every offence forfeit 10*s.* for every hundred weight.

Cordage to be distinguished as *staple* and *inferior*.

And maker's name to be affixed.

Sect. 5. And if any rope-maker shall wilfully and knowingly permit or suffer his name to be put as aforesaid on the tally of any cable, &c. not being of his own proper manufacturing; or if the vender or proprietor of any such cable, &c., or any other person whomsoever, shall wilfully and knowingly mark upon the tally affixed thereon the name of any person, not being the manufacturer thereof, he shall forfeit 20*l.*

Penalty on putting a false name on cordage.

Sect. 6. And if any person shall make any cables of any old or worn stuff, which shall contain above seven inches in compass, he shall forfeit four times the value thereof.

Penalty on making cables of old stuff.

Sects. 8, 9 & 10 relate to the importing of cordage, but they were repealed by 6 Geo. IV. c. 105.

Importing cordage.

Sect. 7. All pecuniary penalties or forfeitures by this act imposed exceeding 5*l.* are to be recovered in the Courts of Westminster; if not ex-

Penalties how to be recovered and applied.

10. *Cordage for Shipping.*

25 Geo. III. c. 56.

ceeding 5*l.* the same may be levied by distress, by one justice, on the oaths of *two* witnesses, and if sufficient distress cannot be found, such justice shall commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, nor less than seven days, or until such penalty and all costs and charges attending the same shall be paid. And all such penalties and forfeitures, and also all cordage which shall be forfeited, shall be paid and delivered to the person who shall sue, who may sell or otherwise dispose of such cordage (after being cut into lengths not exceeding twelve feet) to his own use.

Appeal.

Sect. 11. Provided, that if any person shall think himself aggrieved by any thing done in pursuance of this act, and for which no particular method of relief is appointed, he may, within four months after such matter done, appeal to the sessions, giving fourteen days' notice, in writing, of his intention to appeal and the matter thereof, to the person appealed against, and within four days after giving such notice, entering into recognizance before some justice for the county, city, or place, with two sureties, to try such appeal, and abide the order, and pay such costs as shall be awarded at such sessions; and on due proof of such notice, the justices at such sessions shall hear and finally determine such appeal, and award such costs as they shall think proper.

Proceedings not to be quashed; nor distress unlawful for want of form.

Sect. 12. And no order, verdict, judgment, or other proceeding shall be quashed for want of form only; or be removed by *certiorari*, or any other writ or process whatsoever; and where any distress shall be made, it shall not be deemed unlawful, nor the party making the same trespassers *ab initio* for want of form or any irregularity; but the persons aggrieved may recover damages in an action on the case, provided sufficient amends have not been made before action brought.

Queen's stores.

As to *queen's stores*, see *post*, "*Stores*."

Shire-Hall.

[4 Geo. IV. c. 64; 7 Geo. IV. c. 63; 2 & 3 Vict. c. 69.]

THE 4 Geo. IV. c. 64, repeals the 14 Geo. III. c. 59, relating to the ventilation of shire-halls or other courts of justice. (*See* the new provisions, "*Gaols*," Vol. II.)

The 7 Geo. IV. c. 63, s. 1, repeals the 9 Geo. III. c. 20. And by Sect. 2, all acts commenced under the repealed act, are declared valid, and may be completed under this act.

If justices, upon presentments made, shall deem shire-hall, &c. insufficient, or in want of repair, they shall give notice that same will be considered at some future sessions, when they may take such measure as shall appear requisite for the purpose.

Sect. 3. "Whenever it shall appear to the justices at any general or quarter sessions of the peace, to be holden at any time after the passing of this act, in any county, riding, or division in England or Wales, by any presentment to be made by the grand jury at any assizes or great session or session of gaol delivery, or session of the peace, to be holden for any such county, riding, or division, or by any presentment to be at any time made by any two or more justices of the peace in and for such county, riding, or division, and laid before the justices at any such general or quarter sessions of the peace, that any shire-hall, county-hall, or other building accustomably made use of for holding the assizes, or grand or other sessions of the peace, or that any lodgings for the accommodation of his majesty's judges of assize in and for such county, riding, or division, shall be insufficient, inconvenient, deficient, or in want of repair or improvement, or that there is a necessity for the erection of a new shire-hall, county-hall, or other building, or of lodgings for his majesty's judges of assize, it shall and may be lawful for the justices assembled at

the general or quarter sessions at which such presentment shall be laid before such justices, or at the then next general or quarter sessions, or adjournment thereof, for such county, riding, or division, and they are hereby required, to cause notice to be given three times at least in some public newspaper circulating within such county, riding, or division, of such report or presentment having been laid before them at such sessions, and of their intention to take the same into consideration at the next ensuing or some subsequent general or quarter sessions or adjournment thereof; and in case the justices at such last-mentioned sessions, or the major part of them, shall resolve that such report or presentment is well-founded, then it shall and may be lawful for such justices, and they are hereby required, at the sessions mentioned in such notice, or at some subsequent sessions or adjournment thereof, with the like notice, to take such measures, either by contract or otherwise, as shall appear to them to be requisite and proper for the altering, enlarging, repairing, or improving of any shire-hall, county-hall, or other building or lodgings as aforesaid, or for the pulling down of any such shire-hall, county-hall, or other building or lodgings, or any part thereof, and for the building of any new shire-hall, county-hall, or other building or lodgings of his majesty's judges, or any part thereof, in lieu of any building or any part of any building which shall be so pulled down, regard being had, in the case of contracts, to the reasonableness of the price and responsibility of the contractors; and every contractor shall give sufficient security for the due performance of his contract to the clerk of the peace for such county, riding, or division; and such contract may be inspected at all reasonable times by any justices, or by any other person contributing to the rate of such county, riding, or division, without fee or reward." 7 Geo. IV. c. 63. No fee.

Sect. 4. "After such presentment and notice as aforesaid, it shall and may be lawful for the justices in general or quarter sessions assembled, or the major part of them, and they are hereby empowered, to purchase any houses, lands, tenements, or hereditaments for the purpose of enlarging, improving, or rendering more commodious, or for the building or rebuilding any shire-hall, county-hall, or other building or lodgings as aforesaid, or any part thereof, and to direct the property so purchased to be conveyed to such person or persons as the said justices shall think fit, in trust for the purposes aforesaid, under the regulations and directions in this act contained; and such houses, lands, tenements, or hereditaments shall, when enclosed and added to such shire-hall, county-hall, or other building or lodgings, be deemed and taken to be parts of such shire-hall, county-hall, or other building or lodgings, and to be within the county, riding, or division, to the use of which such shire-hall, county-hall, or other building or lodgings may be applied, to all intents and purposes whatever, so long as the same shall be used by such county, riding, or division, for the purposes of this act, and no longer." Justices may purchase houses, &c., for building or enlarging shire-hall, &c.

Sect. 5. "In case any presentment shall be expressly made by any grand jury, that the place wherein any old shire-hall, county-hall or other building or lodgings as aforesaid, is situated, is improper, and that the shire-hall, county-hall, or other building or lodgings as aforesaid, ought therefore to be removed to some other place within the county, riding, or division, or in case any presentment shall be made by any grand jury, that any shire-hall, county-hall, or other building or lodgings as aforesaid, shall be in such a state that the same ought to be pulled down, and a new building erected, it shall be lawful for the justices at their general or quarter sessions assembled, and they are hereby required to take such presentment into their consideration; and if it shall be resolved by the justices assembled at two successive general or quarter sessions, or the major part of them, that any old shire-hall, county-hall, or other building or lodgings as aforesaid, ought to be removed or pulled down, and that such new shire-hall, county-hall, or other building or lodgings as aforesaid, are necessary, it shall be lawful for the justices so assembled to contract for the building of a new shire-hall, county-hall, or other building in any part May remove site of shire halls upon express presentment that old shire-hall was unfit and inconvenient.

7 Geo. IV. c. 63.

Distance from site of old shire-hall.

of the county, riding, or division which they may deem most eligible, (not being more than one mile from the site of the shire-hall, county-hall, or other building, in lieu of which the same shall be built;) and whenever the building of any court of justice is or shall be so attached to any shire-hall, county-hall, or other building, as to render it impracticable or inconvenient to repair, enlarge, improve, or rebuild the said shire-hall, county-hall, or other building, without also altering or pulling down the building of the said court, then and in such cases it shall be lawful for the justices in general or quarter sessions assembled to cause such courts to be altered or pulled down, or to be rebuilt, either on the same or on any other site, subject to the same provisions as are by this act appointed with respect to shire-halls, county-halls, or other buildings as aforesaid."

Sites of such shire-halls may be applied to improvement of roads or streets, &c.

Sect. 6. Provided, "That if the said justices so assembled in two successive general or quarter sessions shall see fit, it shall and may be lawful for such justices to give, grant, or convey gratuitously, the whole of the ground or soil of any such shire-hall, county-hall, or other building or lodgings as aforesaid, or any part or parts of the same respectively, for the purpose of widening, opening, or otherwise improving any road, street, way, or passage, or roads, streets, ways, or passages, in any county, riding, or division, or in any city or town, within or adjoining to which such shire-hall, county-hall, or other building or lodgings as aforesaid, shall be situate; and if the whole of such ground or soil shall not be necessary for making the improvement or improvements, then to sell or dispose of the residue thereof in manner herein provided."

How overplus disposed of.

All matters performed in new shire-halls, &c., shall be as valid as if done in the old shire-halls, &c.

Sect. 7. "All matters and things whatever, which might or ought to be lawfully done, performed, and executed in any shire-hall, county-hall, or other building, or in the lodgings of his majesty's judges as aforesaid, which shall be wholly or in part pulled down, or the site of which shall be removed under the provisions of this act, shall and may be lawfully done, performed, and executed in any new shire-hall, county-hall, or other building or lodgings as aforesaid, which may be built, or rebuilt in the lieu and stead of any shire-hall, county-hall, or other building or lodgings so pulled down, or in any shire-hall, county-hall, or other building or lodgings which shall be built, rebuilt, repaired, or enlarged, in lieu of any part of any former shire-hall, county-hall, or other building or lodgings, in lieu of or* addition to any part of any former shire-hall, county-hall, or building or lodgings as aforesaid; and that all matters and things done, performed, or executed, in such new shire-hall, county-hall, or other building or lodgings, shall be as good, valid, and effectual to all intents and purposes, whatever, as if they had been done, performed, and executed in such former shire-hall, county-hall, or other building or lodgings as aforesaid."

* *Sic.*

Proviso as to lodgings of the judges at county assizes.

Sect. 8. "Whenever the courts of assize, *nisi prius*, oyer and terminer, or gaol delivery, for any county at large in England, shall be held in or near any city or town which is also a county of itself, and at the same time with the like or any of the like courts for the said city or town, the lodgings of the judge or judges shall be construed and taken to be situate both within the county at large, and also within the county of such city or town, for the purpose of transacting the business of the assizes for such county at large, and for the county of such city or town during the time that such judge or judges shall continue therein for the execution of their several commissions." (*See* further, 2 & 3 Vict. c. 69, *post*, 1078.)

Justices may order occasional repairs, and report same to sessions.

Sect. 9. Provided, "That in case it shall at any time happen that any such shire-hall, county-hall, or other building or lodging shall be injured by means of fire or any sudden accident, between the several times of holding the general or quarter sessions for such county, riding, or division, it shall and may be lawful for any two or more justices of the peace for such county, riding, or division, to make an order that such repairs shall be immediately done and made, as may be necessary and sufficient for the upholding of any such shire-hall, county-hall, or other building or lodgings; and such order of such two justices, together with an account

of any proceedings which may have taken place in consequence thereof, shall be laid before the next court of general or quarter sessions to be holden for such county, riding, or division; and it shall be lawful for such court, and such court is hereby authorized and required, to order the payment of such sum or sums of money as in the opinion of such court shall appear to have been properly expended in such repairs as aforesaid." 7 Geo. IV. c. 53.

Sect. 10. "When it shall appear that the amount of any estimate approved by the justices for the building or rebuilding, repairing, improving, or enlarging any shire-hall, county-hall, or other building or lodgings as aforesaid, under the powers of this act, shall exceed one-half of the amount of the ordinary annual assessment for the rate of any county, riding, or division, (such ordinary assessment to be taken on an average of such rate for the last seven years preceding,) it shall and may be lawful for the justices in quarter sessions assembled, from time to time to borrow and take up, on mortgage of such rate, by instrument in the form contained in the schedule to this act annexed, marked (A.), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than 50*l.* each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rates; and it shall and may be lawful for the justices so assembled, and they are hereby authorized to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement signed by the chairman and two or more other justices present at the time of making such order, shall be, and the same is hereby declared to be, effectual for securing every sum of money so advanced, with interest thereon, to the person or persons advancing the same on such terms as in and by such agreement shall be stipulated, and copies or extracts of all such agreements shall be kept by the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered, by indorsing his name on the back of such security, to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties;* and the person to whom such security or any such assignment thereof shall be made, and his executors, administrators, and assigns, shall be creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced."

When amount of estimate for building exceeds one half of annual county rate, justices may borrow money on mortgage of the rates.

In what case agreement effectual

Copies kept by clerk of peace.

Sect. 11. "It shall and may be lawful for the said justices, and they are hereby authorized and required, to charge the rate to be raised upon such county, riding, or division, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole sum borrowed within fourteen years from the time of borrowing the same; and such sums shall be assessed on the county, riding, or division, in such manner as county rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied under the direction of the justices, in discharge of the interest, and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the justices shall, and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and such justices shall also, and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due, and the books or book so adjusted and

Justices may charge county rates with interest on money borrowed, and form a sinking fund to repay the whole as herein mentioned.

Books to be kept of receipts and payments.

7 Geo. IV. c. 63.

settled to deliver into court at every general or quarter sessions to be held for such county, riding, or division; and the justices shall also, and they are hereby required at every such sessions carefully to inspect all such accounts, and to make orders for carrying the purposes of this act into execution, in such manner as to them shall seem meet; and if at any time it shall appear to the justices that the person appointed for the purposes aforesaid has neglected to perform any matter or thing required by this act, or by the order of such justices, or has not duly and without delay applied all money in his hands to the purposes directed by this act, such person shall forfeit a sum equal to one-half the amount of the money which shall not have been applied to the purposes of this act; and the justices so assembled in sessions as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit, taking care to discharge, in the first place, all such securities as shall bear the highest rate of interest."

Neglecting to perform act.

Penalty.

Powers of 6 Geo. IV. c. 40, applied to this act.

Sect. 12. "An act made in the sixth year of his present majesty's reign, intituled 'An Act to enable Justices of the Peace in England, in certain Cases, to borrow Money on Mortgage of the Rate of the County, Riding, or Place for which such Justices shall be then acting,' and the several clauses, powers, and provisions in the said recited act contained, relating to the paying off of any debt or debts, and the borrowing of any money for such purpose, shall and may be applied in the paying off any money borrowed under the provisions of this act, as fully and effectually as if such clauses, powers, and provisions were repeated and re-enacted in this act."

Persons or districts liable to repair or furnish shire-halls, &c. shall continue so liable.

Sect. 13. Provided, "That in cases where any shire-hall, county-hall, or other building, accustomably made use of for holding the assizes or great or other sessions, or any lodgings for the accommodation of his majesty's judges of assize, in any county, riding, or division in England or Wales, hath for time out of mind been maintained, repaired, or provided at the expense of any particular person or persons, or of any riding or ridings, division or divisions, or part or parts of any county or shire, or city or town corporate, such shire-hall, county-hall, or other building or lodgings, shall continue to be maintained, repaired, or provided at the expense of the person or persons so liable thereto, or at the expense of such riding or ridings, or division or divisions, or part or parts of any county, or city, or town corporate, so liable thereto, in like manner as heretofore, to all intents and purposes whatever, any thing in this act to the contrary in anywise notwithstanding; and that all cities, towns, boroughs, corporations, rapes, lathes, wapentakes, ports, parishes, townships, or other places or divisions, and all and every person and persons, and body or bodies politic or corporate, which shall by law or ancient usage be bound or obliged to maintain, repair, or provide any such shire-hall, county-hall, or other building or lodgings as aforesaid, or to furnish and provide the same with benches, tables, rails, or other fixtures or furniture, and to keep the same in repair, shall continue and be bound and obliged so to do; and all and every sum and sums of money to be laid out in rebuilding, repairing, maintaining, providing, or furnishing any shire-hall, county-hall, or other building or lodgings as aforesaid, for the rebuilding, repairing, maintaining, providing, or furnishing of which any riding, division, or part of any county or shire, city, or town corporate, person or persons, body or bodies politic or corporate, shall be bound to provide as aforesaid, shall be procured or provided by, assessed and rated on, and levied and collected by such riding, division, or other part of such county or shire, city, or town corporate, person or persons, body or bodies politic or corporate, and not on the county at large; any thing hereinbefore contained to the contrary in anywise notwithstanding."

Powers of 4 Geo. IV. c. 64 extended to this act.

Sect. 14. "That all the clauses, powers, and provisions contained in the 4 Geo. IV. c. 64, (relating to Gaols, *see* "*Gaols*," Vol. III.) with relation to the sale, purchase, and conveyance of houses, lands, tenements, or hereditaments, by any person or persons, or body or bodies politic or corporate, or by any guardians, committees, husbands, trustees, or attorneys

of infants, lunatics, idiots, or persons under coverture or any other disability, and with relation to the valuation of such houses, lands, tenements, or hereditaments, and the application of the money for such purchase, shall, so far as the same are or can be applicable, be applied and extended to the sale and purchase, conveyance and valuation of houses, lands, tenements, or hereditaments, for the purposes of this act, in as full and ample a manner, to all intents and purposes, as if such clauses, powers, and provisions had been repeated and re-enacted in this act." 7 Geo. IV. c. 63.

Sale of former shire-halls or lodgings.

Sect. 15. "In case it shall appear to the justices of the peace assembled at any general or quarter session of the peace holden for any county, riding, or division, that by reason of any shire-hall, county-hall, or other building or lodgings as aforesaid, for such county, riding, or division, having been lately built or considerably enlarged, any other shire-hall, county-hall, or other building or lodgings within such county, riding, or division, shall have become unnecessary, it shall be lawful for such justices, or for the justices assembled at the then next general or quarter sessions to be holden for the same county, riding, or division, and they are hereby authorized, empowered, and required to order notice to be given three times at least in some public newspaper circulating in such county, riding, or division, that the propriety of selling such unnecessary shire-hall, county-hall, or other building or lodgings as aforesaid, will be taken into consideration at the next ensuing general or quarter sessions; and in case the justices at such last-mentioned session, or the majority of them, shall resolve that such unnecessary shire-hall, county-hall, or other building or lodgings ought to be sold, then and in that case it shall be lawful for such justices, and they are hereby authorized and empowered to take such measures for selling such shire-hall, county-hall, or other building or lodgings, together with all out-houses, land, tenements, and hereditaments to the same belonging (unless such building, out-houses, land, tenements, or hereditaments, or any part thereof, shall be the property of his majesty, his heirs, or successors, or of any city or town corporate, body or bodies politic or corporate, or of any private individual), for the best price or prices that can be obtained for the same, either by public auction or private contract, and subject to such conditions and in such manner as such justices shall think proper." (*See* 2 & 3 Vict. c. 69. *post*, 1078.)

Notice of selling the same.

Shire-halls, &c., when sold, to be conveyed by the trustees, &c., to purchaser.

Sect. 16. "Whenever a sale of any shire-hall, county-hall, or other building or lodgings as aforesaid, shall be made pursuant to the directions in this act contained, the purchase-money for the same shall be paid to the treasurer of such county, riding, or division, and it shall be lawful for the trustees or trustee (if any) of every such shire-hall, county-hall, or other building or lodgings as aforesaid, together with the clerk of the peace of such county, riding or division, to convey such shire-hall, county-hall, or other building or lodgings as aforesaid, with the out-houses, land, tenements, and hereditaments thereto belonging, unto and to the use of the purchaser thereof, and to the heirs and assigns of such purchaser, or to such uses as such purchaser or purchasers shall direct or appoint; and every such conveyance, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied by the treasurer towards discharging the expense which shall have been incurred in building, enlarging, or improving any shire-hall, county-hall, or other building or lodgings as aforesaid for the same county, riding, or division, or in aid of any rate of such county, riding, or division, as the justices of the peace for such county, riding, or division, in general or quarter session assembled shall direct."

Application of purchase-money.

Clerk of peace may convey.

Sect. 17. Provided, "That whenever, in the event of any sale being agreed upon in pursuance of this act, it shall appear to the justices by whom the resolution for making such sale shall be entered into, that the lands, tenements, or hereditaments to be sold have never been vested in any trustee or trustees, or that the trustee or trustees thereof are dead, and that there is difficulty in ascertaining the surviving trustee, or the heir or heirs of such surviving trustee*, it shall appear that such heir or heirs is or are under any disability, then and in any such case it shall be lawful for the

* *Sic.*

7 Geo. IV. c. 63.

said justices to order that a conveyance of such lands, tenements, or hereditaments shall be made and executed by the clerk of the peace to the purchaser thereof, and in such case a conveyance thereof by the clerk of the peace, by indenture of bargain and sale (of which no enrolment shall be necessary), shall be valid and effectual to all intents and purposes."

No enrolment of bargain and sale necessary.

Powers of 5 Geo. IV. c. 12. applied to this act.

Sect. 18. "All the powers and provisions contained in an act of the fifth year of the reign of his present majesty, intituled 'An Act to facilitate, in those Counties which are divided into Ridings or Divisions, the Execution of an Act of the last Session of Parliament, for consolidating and amending the Laws relating to the building, repairing and regulating of certain Gaols and Houses of Correction in England and Wales,' shall extend to the several matters and things required by this act to be done by the justices of the peace at any general quarter session of the peace, in as full and ample a manner as if the same had been inserted in and made part of this act."

Not to authorize sale of halls belonging to cities, &c.

Sect. 19. "The powers in this act contained shall not extend or be construed to extend to any halls or other buildings not belonging to and not being the property of counties, ridings, or divisions of counties, or holden in trust for them, but which belong to and are the property of cities and towns corporate, although such halls and other buildings may have been accustomably made use of for holding the assizes or great or other sessions of the counties, ridings, or divisions wherein they are respectively situate."

Recovery and application of fines and penalties.

Sect. 20. "All fines, forfeitures, and penalties imposed by this act shall, on conviction of the offender before any one justice of the peace within his jurisdiction, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice of the peace, who is hereby authorized to hear and examine witnesses on oath or affirmation on any complaint, and to determine the same; and all such fines, forfeitures, and penalties shall be paid from time to time to the treasurer of the county, riding, division, district, city, town, or place for the time being, and shall be applied and disposed of in aid of any rate applicable to the use of any such county, riding, division, district, city, town or place, and to or for no other use or purpose whatsoever; and for want of sufficient distress the offender shall be committed to the common gaol or house of correction for any such term or time, not exceeding three calendar months, as such justice shall think proper."

If no distress, imprisonment

In actions for executing act, general issue.

Sect. 21. "If any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by authority of this act, and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer, or otherwise, judgment shall be given against the plaintiff, the defendant shall recover treble costs, and have the like remedy for the same as any defendant hath by law in other cases; and if a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be, shall certify his approbation of the action and of the verdict obtained thereon." (See further as to treble costs, 5 & 6 Vict. c. 97, "*Justices*," Vol III.)

Treble costs

2 & 3 Vict. c. 69.

By the 2 & 3 Vict. c. 69, entitled "An act to authorize the Purchase or Building of Lodgings for the Judges of Assize on their Circuits," [24th August 1839,] reciting that by the 7 Geo. IV. c. 63, it was amongst other things enacted, "That whenever it should appear to the justices at any general or quarter sessions of the peace to be holden in any county, riding, or division in England or Wales, by any presentment to be made by the grand jury at any assizes or session of gaol delivery or session of the peace to be holden for any such county, riding, or division, or by any presentment to be at any time made by any two or more justices of the peace in and for such county, riding, or division, and laid before the justices at any such general or quarter sessions of the peace, that any lodgings

for the accommodations of his majesty's judges of assize in and for such county, riding, or division should be insufficient, inconvenient, deficient, or in want of repair or improvement, or that there was a necessity for the erection of new lodgings for his majesty's judges of assize, it should be lawful for the justices assembled at the general or quarter sessions at which such presentment should be laid before such justices in manner therein mentioned, to take such measures, either by contract or otherwise, as should appear to them to be requisite and proper for the altering, enlarging, repairing, improving, or pulling down of any such lodgings or any part thereof, and for the building of any new lodgings or any part thereof, in lieu of any building, or any part of any building, which should be so pulled down: and that it is expedient that the powers given by the said act should be enlarged, by enabling the justices to purchase any house or building to be used as lodgings for the judges of assize, or to purchase any land and to cause a house or building to be erected thereon, to be used as such lodging," it is enacted, "That upon any such presentment as in the hereinbefore recited act is mentioned, setting forth that it is expedient to purchase any house or building to be used wholly or partly as lodgings for the judges of assize, or that it is expedient to purchase any land for the purpose of erecting thereon any such house or building, and to cause any such house or building to be erected thereon accordingly, all and singular the powers, authorities, and provisions in the said recited act contained relative to the altering, enlarging, repairing, improving, or pulling down and rebuilding any such lodgings, and to the raising money for that purpose, shall be deemed and taken to apply to and to authorize the purchase of any house or buildings to be used wholly or partly as lodgings for the judges of assize or special commission of oyer and terminer and gaol delivery, and the purchase of any land, and the erection thereon of any house or buildings for such purpose, and the defraying the expenses of any such purchase or building, and the raising money for any such purpose, in the same way as the repair and alteration of any judges' lodgings are authorized and may be carried into effect under the provisions of the said recited act."

Enlarging the powers of 7 Geo. IV. c. 63, respecting the purchase of houses or buildings for judges' lodgings.

Sect. 2. "That any house, building, or land to be purchased under the provisions of this act shall be conveyed to such persons or person as the said justices shall think fit, in trust for the purposes aforesaid, in the same way as in the said recited act is directed in respect to land thereby authorized to be purchased."

Houses, &c. so purchased vested in trust.

Schedule (A.) to which the 7 Geo. IV. c. 63, refers.

"We, A. B., one of his majesty's justices of the peace, and chairman of the court of quarter sessions of the peace holden at , on the day of , for the county, &c. of [as the case may be], *C. D. and E. F., esquires, two other of his majesty's justices of the peace acting for the said county, &c., and assembled in the said court, in pursuance of the powers to us given by an act passed in the seventh year of the reign of his majesty King George the Fourth, intituled, &c.* [insert the title of this act], *do hereby in open court mortgage and charge all the rates to be raised within the said county, &c.* [as the case shall be], *under the description of county rates, by the laws now in being, with the payment of the sum of , which G. H., of , hath proposed and agreed to lend, and hath now actually advanced and paid towards defraying the expenses of building, repairing, &c.* [as the case shall be], *the shire-hall, county-hall, or other buildings or judges' lodgings* [as the case shall be], *for the said county, &c.: and we do hereby assign the same unto the said G. H., his executors, administrators, and assigns, for securing the payment of the sum of , and interest for the same, after the rate of per centum per annum, and do order the treasurer for the said county, &c., or other person* [as the case shall be], *to pay the interest of the sum of half-yearly, as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said act."*

Form of mortgage and charge upon the county rate, for securing money borrowed.

Shoemakers. *See "Excise,"* Vol. II.; *"Leather,"* Vol. III.; *"Servants," ante,* p. 907.

Shooting. *See "Malicious Injuries to Persons," ante; In case of Smuggling, see "Excise,"* Vol. II.

Shops, *Breaking into, see "Burglary,"* Vol. I; *Stealing in, see "Larceny,"* Vol. III.; *Setting fire to, see "Burning,"* Vol. I.; *Riotously demolishing, see ante, "Riot."*

Shrubs. *See "Trees,"* Vol. VI.

Silks.

FOR sundry matters relating to silks and calicoes, see the article *Linen Cloth,* in *title "Excise,"* Vol. II.

Workmen. Concerning servants and other workmen in the silk manufactories, *see title "Servants," ante,* p. 883.

Offences As to malicious injuries to silks and manufactures, see the 7 & 8 Geo. IV. c. 30, s. 3; *"Malicious Injuries to Property," ante,* p. 28, 30.

As to stealing from silk manufactories, *see "Larceny,"* Vol. III.

Similiter. *See ante, "Replication."*

Simple Larceny. *See "Larceny."*

Simony. *In Simony all are principals, ante,* Vol. I

Slander.

[3 Edw. I. c. 34; 2 Rich. II. st. 1, c. 5; 12 Rich. II. c. 11.]

Written slander. AS to *written* slander, *see "Libel,"* Vol. III.

How far an object of criminal jurisdiction. I do not find it (says Dr. Burn) anywhere clearly settled how far slander or scandalous words become objects of the criminal jurisdiction, and so cognizable before justices of the peace, by reason of the different circumstances in matters of so intermediate a nature: for the same words, when spoken of different persons, and even of the same person, with a

different emphasis and manner of delivering them, may receive a very different interpretation.

In general, it seemeth, that words that directly tend to a breach of the peace, as if one man challenge another, are cognizable before justices of the peace; for which the party may be bound to the good behaviour, and even indicted. (*R.* v. *Wrightson*, 2 *Salk.* 698; *R.* v. *Executors of Summers*, 1 *Keb.* 931.)

But if they do not tend directly to a breach of the queen's peace, but are matters only of private slander between party and party, which no way affect the public administration of justice, as in case where the common people are wont to call one another knaves and rogues and whores and thieves, I do not find it asserted by any good authority that justices of the peace have any jurisdiction at all in such matters, but the proper remedy seems to be in one of these two ways, either by a prosecution in the spiritual court, or by an action upon the case, at the common law. (*See* "*Libel*," Vol. III.)

Scandalum magnatum.

There is one species of slander, of which the law takes a more special notice; and that is, when it relates to the great men of the realm, concerning whom it is enacted, by the 3 Edw. I. c. 44; 2 Rich. II. st. 1, c. 5; and 12 Rich. II. c. 11, "That none shall tell or publish any false news or tales, whereby discord, or occasion of discord, or slander, may grow between the king and his people, or the great men of the realm; and that none shall devise, speak, or tell any false news or lies of any prelates, lords, judges, or other great men of the realm, whereof any discord or slander may arise; on pain of imprisonment, until he hath brought into court the first author of the tale; if he cannot find the author, he shall be punished by advice of council."

Publish any false News or Tales.]—But this extends only to extra-judicial slanders; for, if a man charge them in due course of law, although the charge be false, yet there will lie no action *de scandalis magnatum*, neither at common law nor by the statutes. (2 *Inst.* 328.)

Slandering a justice.

As to slandering a justice of the peace in the execution of his office, *see* "*Justices*," Vol. III.

Slaughter-Houses. *See* "*Horses*," Vol. III.

Slave-Trade and Slavery.

Statutes relating to suppression of, in general.

THE general statutes relating to the abolition and suppression of slavery are, the 5 Geo. IV. c. 113, extended by 5 & 6 Vict. c. 101 to the governors and officers of the East India company; the 3 & 4 Will IV. c. 73, amended by 5 & 6 Vict. c. 91; but, so far as relates to Portuguese vessels, afterwards repealed by 5 & 6 Vict. c. 114 (see, however, the 6 & 7 Vict. c. 53, for the new treaty with Portugal); and the 6 & 7 Vict. c. 98, which extends the provisions of 5 Geo. IV. c. 113, to "the several acts, matters, and things therein mentioned, when committed by British subjects in foreign countries and settlements not belonging to the British crown;" and enacts likewise further provisions "for the more effectual suppression of the slave trade and of certain practices tending to promote and encourage it."

The queen may conclude treaties

By an act passed each session (the act now in force being the 6 & 7 Vict. c. 46,) her majesty is authorized by order in council to direct that

with any foreign power immediately.

treaties for the suppression of the slave trade, concluded with any foreign powers or states, may be carried into immediate execution.

List of statutes for carrying same into effect.

Of late years, many such treaties have been concluded; the following will be found to be the list of the several acts of parliament passed for carrying the same into effect with the several states therein mentioned, *viz.*, the 3 & 4 Will. IV. c. 72, with the king of the French; the 5 & 6 Will. IV. c. 60, with the king of the French and king of Sardinia; the 5 & 6 Will. IV. c. 61, with the king of the French and king of Denmark; the 6 Will. IV. c. 6, with the queen regent of Spain; the 1 & 2 Vict. c. 39, with the Hans Towns; *Ibid.*, c. 40, with Sweden; *Ibid*, c. 41, with the Netherlands; *Ibid*, c. 83, with the duke of Tuscany: *Ibid*, c. 84, with the king of the Two Sicilies; the 3 & 4 Vict. c. 67, with the Republic of Venezuela; the 5 & 6 Vict. c. 40, with the Argentine Confederation; *Ibid*, c. 41, with the Republic of Hayti; the 6 & 7 Vict. c. 14, with the Republic of Bolivia; *Ibid*, c. 15, with the Republic of Texas; *Ibid*, c. 16, with the Oriental Republic of the Uruguay; *Ibid*, c. 50, being the quadruple treaty between England, Austria, Prussia and Russia; *Ibid*, c. 51, with the Mexican Republic; *Ibid*, c. 52, with the Republic of Chile; and *Ibid*, c. 53, with the queen of Portugal.

Piracy.

By 5 Geo. IV. c. 113, s. 9, dealing in slaves on the high seas, &c. shall be deemed piracy. (*See "Piracy," ante*, p. 548.)

Persons dealing in slaves, or exporting or importing slaves:

Sect. 10. "That (except in such special cases as are in and by this act permitted, or otherwise provided for (*a*)) if any person shall deal or trade in, purchase, sell, barter, or transfer, or contract for the dealing or trading in, purchase, sale, barter, or transfer of slaves, or persons intended to be dealt with as slaves, or shall, otherwise than as aforesaid, carry away or remove, or contract for the carrying away or removing of slaves or other persons, as or in order to their being dealt with as slaves; or shall import or bring, or contract for the importing or bringing, into any place whatsoever, slaves or other persons, as or in order to their being dealt with as slaves; or shall, otherwise than as aforesaid, ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transhipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves, or other persons, for the purpose of their being carried away or removed, as or in order to their being dealt with as slaves; or shall ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, transhipping, embarking, receiving, detaining, or confining on board of any ship, vessel, or boat, slaves or other persons, for the purpose of their being imported or brought into any place whatsoever, as or in order to their being dealt with as slaves; or shall fit out, man, navigate, equip, despatch, use, employ, let, or take to freight or on hire, or contract for the fitting out, manning, navigating, equipping, despatching, using, employing, letting, or taking to freight or on hire, any ship, vessel, or boat, in order to accomplish any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or shall knowingly and wilfully lend or advance, or become security for the loan or advance, or contract for the lending or advancing, or becoming security for the loan or advance of money, goods, or effects, employed, or to be employed, in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful or shall knowingly and wilfully become guarantee or security, or contract for the becoming guarantee or security for agents employed, or to be employed in accomplishing any of the objects or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful, or in any other manner to engage, or to* contract to engage, directly or indirectly therein, as a partner, agent, or otherwise; or shall knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for the shipping, transhipping, lading, receiving, or putting on

or shipping slaves in order to exportation or importation:

or fitting out slave ships.

or embarking capital in the slave-trade;

or guaranteeing slave adventures;

* *Sic.*

or shipping goods, &c., to be employed in the slave trade;

(*a*) See the 6 & 7 Vict. c. 98.

board of any ship, vessel, or boat, money, goods, or effects, to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or shall take the charge or command, or navigate, or enter and embark on board, or contract for the taking charge or command, or for the navigating or entering and embarking on board of any ship, vessel, or boat, as captain, master, mate, surgeon, or supercargo, knowing that such ship, vessel, or boat, is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so take the charge or command, or navigate, or enter and embark, or contract so to do, as aforesaid, intended to be employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or shall knowingly and wilfully insure, or contract for the insuring of any slaves, or any property or other subject matter engaged or employed in accomplishing any of the objects, or the contracts in relation to the objects, which objects and contracts have hereinbefore been declared unlawful; or shall wilfully and fraudulently forge or counterfeit any certificate, certificate of valuation, sentence, or decree of condemnation or restitution, copy of sentence or decree of condemnation or restitution, or any receipt (such receipts being required by this act), or any part of such certificate, certificate of valuation, sentence, or decree of condemnation or restitution copy of sentence or decree of condemnation or restitution, or receipt as aforesaid; or shall knowingly and wilfully utter or publish the same knowing it to be forged or counterfeited, with intent to defraud his majesty, his heirs, or successors, or any other person or persons whatsoever, or any body politic or corporate; then and in every such case the person or persons so offending, and their procurers, counsellors, aiders, and abettors shall be, and are hereby declared to be felons, and shall be transported beyond seas for a term not exceeding fourteen years, or shall be confined and kept to hard labour for a term not exceeding five years, nor less than three years, at the discretion of the court before whom such offender or offenders shall be tried and convicted."

5 Geo. IV. c. 113.

or serving on board slave-ships as captain, master, &c., surgeon, &c.

or insuring slave adventures;

or forging instruments relating to the slave laws,

declared guilty of felony, &c.

Sect. 50. "All offences committed against this act may be inquired of, tried, determined, and dealt with, as if the same had been respectively committed within the body of the county of Middlesex."

Process and trial.

The 29th section of this act, directing that no appeals shall be prosecuted from any sentence of any court of Admiralty or Vice-Admiralty west of the Cape of Good Hope, touching any matters in that act, unless an inhibition be decreed within twelve months from the time of the sentence being pronounced, applies as well to foreigners as British subjects. And, although parliament cannot legislate for foreigners out of the dominions, yet it can fix a time within which application must be made for redress to the tribunals of the empire; which, being matter of procedure, becomes the law of the forum, and by which all mankind are bound. (*Lopez* v. *Burslem, The Guiana*, 7 *Jur.* 1119.)

A merchant of London was indicted for an offence against the above act. His counsel applied to the court to allow the prisoner to sit by him, not on the ground of his position in society, but because he was a foreigner, and several of the documents in the case were in a foreign language, and it would, therefore, be convenient for his counsel to have him by his side, that he might consult him during the trial:—It was held, that the application was one which ought not to be granted.

The provisions of the act are not confined to acts done by British subjects in furtherance of the slave trade in England or the British colonies, but apply to acts done by British subjects in furtherance of that trade in places not part of the British dominions.

In order to convict a party who is charged with having employed and loaded a vessel for the purpose of slave-trading, it is not necessary to shew that the vessel which carried out the goods was intended to be used for bringing back slaves in return: but it will be sufficient if there was a

slave adventure, and the vessel was in any way engaged in the advancement of that adventure. Where a party living in London was charged with having chartered a vessel and loaded goods on board for the purposes of slave-trading, it was held: that slave-trading papers found on board the vessel when she was seized in foreign parts, but not traced in any way to the knowledge of such party, were not admissible in evidence against him. (*Reg.* v. *Pedro de Zulueta the Younger*, 1 *Curr & Kirwan*, 215.)

Compensation acts

The statutes giving compensation to former slave owners, are the 3 & 4 Will. IV. c. 73; the 5 & 6 Will. IV. c. 45; the 6 Will. IV. c. 5, the 6 & 7 Will. IV. c. 82; the 1 & 2 Vict. c. 3; *Ibid.* c. 19; and the 4 & 5 Vict. c. 18.

Bounties on Seizure of.

By the 1 Will. IV. c. 55, the rate of bounties payable upon the seizure of slaves is reduced; and see further, as to bounties, the 1 & 2 Vict. c 47, as likewise the several acts relating to the special treaties with foreign states.

A wrongful dispossession of original seizors confers no title to the second seizors in the bounties awarded by act of parliament on the tonnage of a condemned slave ship. (*The Eagle*, 1 *Rob.* 236.)

The principles established in cases of joint capture in time of war are to be applied to claims of joint capture in the suppression of the slave trade; although, possibly, those principles cannot be applied in the latter instance with the same rigid strictness as in the former; *e. g.* where, in the latter case, the only evidence on the part of the claimant to share consists in the testimony of releasing witnesses. (*The Sociedade Felix*, 1 *Rob.* 303.)

Sluice. *See ante*, "*Rivers.*"

Smuggling. *See* "*Excise*," Vol. II.

Snares. *See* "*Game*," Vol. III.

Snuff. *See* "*Tobacco*," Vol. VI.

Soap. *See* "*Excise*," Vol. II.

Societies. *See* "*Friendly Societies*," Vol. III.; —*ante*, "*Scientific Societies.*"

Sodomy.

What it is.

SODOMY or Buggery (from the Italian *bugarone*, a buggerer, this vice being said to have been brought into England out of Italy by the Lombards) is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the

Creator and order of nature by mankind with mankind, or with brute beast, or by womankind with brute breast. (3 *Inst.* 58.)

Where the defendant was indicted for having committed this offence with a woman, a majority of the judges held that this was within the statute, but two or three of them held that it was not; no opinion was publicly given. (*R.* v. *Wiseman, Fortesque,* 91; *see R.* v. *Jellyman,* 8 *C. & P.* 604.)

If it be committed on a boy under fourteen years of age, it is felony in the agent only. (1 *Hale,* 670; 3 *Inst.* 59.)

The evidence in a prosecution for sodomy is the same as in rape, for which see *post,* "*Rape,*" Vol. V. with two exceptions; 1st. That it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and 2ndly. Both agent and patient (if consenting) are equally guilty. (3 *Inst.* 59; 1 *Hale,* 670.)

Where the prisoner forced open a child's mouth, and put in his private parts, and proceeded to a completion of his lust, the judges were of opinion that this did not constitute the offence of sodomy. (*R.* v. *Jacobs, R. & R.* 331.)

As in the case of rape, penetration alone is sufficient to constitute the offence, it may be proper to suggest to magistrates, before whom persons are brought on charges of this kind, that they should not bind over the parties accused to answer the capital part of this charge, unless it appears that the crime was complete In proportion as the crime is most detestable, so ought the proof of guilt to be the clearest and most undoubted. (1 *East's P. C.* 480; 4 *Bla. Com.* 215.)

An admission by the prisoner that he had committed such an offence at another time and with another person, and that he had a tendency towards such practices, ought not to be received in evidence in an indictment for this offence. (*R.* v. *Cole,* by the twelve judges, *Phill. on Evid.* 7 ed. 181.)

Indictment.

The indictment has the words *contra naturæ ordinem rem habuit veneream, et carnaliter cognovit;* but Mr. *J. Foster* says, this was never thought sufficient without also charging *peccatumq. illud sodomiticum, anglicè dictum* buggery, *adtunc et ibidem nequiter felonicè, &c. commisit, et perpetravit;* and he refers to *Co. Ent.* 351 b, as a precedent settled by great advice. (1 *East's P. C.* 680.)

An indictment charged that two defendants, in a certain open and public place called, &c., frequented by divers of the liege subjects, &c., unlawfully met together for the purpose and with the intent of committing with each other, openly, lewdly, and indecently, in the said public place, divers nasty, wicked, filthy, lewd, beastly, unnatural, and sodomitical practices, and then and there unlawfully, wickedly, openly, lewdly, and indecently did commit with each other, in the sight of divers of the liege subjects, &c., in the said public place there passing, &c., divers such practices as aforesaid, is bad, as not specifying any offence with legal certainty. (*Reg.* v. *Rowed,* 3 *Ad. & E., N. S.,* 180; 2 *Gale & D.* 518, *S. C.*)

Not triable at sessions.

This offence is not triable at any quarter sessions, 5 & 6 Vict. c. 38, s. 1.

Punishment for.

In ancient times, according to some authors, this offence was punishable with burning, the others say with burning alive. Now by stat. 9 Geo. IV. c. 31, s. 15, "every person convicted of the abominable crime of buggery, committed either with mankind or with *any animal,* shall suffer death as a felon." This sentence of death may be recorded, 4 Geo. IV. c. 48, *title* "*Judgment,*" Vol. III.

In the navy.

By the articles of the navy, (22 Geo. II. c. 33, s. 19,) if any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy with man or beast, he shall be punished with death by the sentence of a court martial.

When defendant may be convicted of the assault.

The defendant may be convicted of the assault, if the evidence fail to make out the entire charge of rape against him, (7 Will. IV. & 1 Vict. c. 85, s. 11;) but not so if the offence be beastiality, for the enactment

applies only where the charge includes an offence against the person. (*Reg.* v. *Eaton*, 8 *C. & P.* 417.) *See Assault*, Vol. I.

Assaults to commit.

As to the offence of an assault to commit sodomy, *see Assault*, Vol. I. p. 294.

(1.) Commitment for sodomy.

[Commencement as usual, as *ante*, 11,] *on the day of , at the parish of , in the said county of , feloniously did assault one A. B., and then and there feloniously, wickedly and diabolically, and against the order of nature, had a venereal affair with the said A. B. and then and there knew the said A. B., and then and there feloniously wickedly, diabolically, and against the order of nature, with the said A. B. did commit and perpetrate that detestable and abominable crime of buggery; against the form of the statute in that case made and provided. And you the said keeper, &c* [as usual to the end.]

(2.) Commitment for bestiality.

[Commencement as usual, as *ante*, 11,] *on the day of , at the parish of , in the said county, with a certain cow, feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair, and then and there feloniously, wickedly, diabolically, and against the order of nature, carnally knew the said cow; and then and there feloniously, wickedly, diabolically, and against the order of nature, with the said cow, did commit and perpetrate that detestable and abominable crime of buggery, against the form of the statute in that case made and provided. And you the said keeper, &c.* [as usual to the end.]

(3.) Indictment for sodomy.

—— to wit. THE jurors for our lady the Queen upon their oath present, that C. D. late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one A. B. then and there being, feloniously did make an assault, and then and there feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair with the said A. B., and then and there carnally knew him the said A.B., and then and there feloniously, wickedly, diabolically, and against the order of nature with the said A. B. did commit and perpetrate that detestable and abominable crime of buggery, (not to be named amongst Christians): against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.

(4.) Indictment for bestiality.

—— to wit. THE jurors for our lady the Queen, upon their oath present, that C. D. late of the parish of , in the county of , labourer, on the day of , in the year of the reign of our lady the now Queen Victoria, with force and arms, on, &c. at the parish aforesaid, in the county aforesaid, with a certain cow then and there being, feloniously, wickedly, diabolically, and against the order of nature, had a venereal affair, and then and there feloniously, wickedly, and diabolically, and against the order of nature, carnally knew the said cow; and then and there feloniously, wickedly, diabolically, and against the order of nature, with the said cow did commit and perpetrate that detestable and abominable crime of buggery, (not to be named among Christians): against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

Soldiers. *See "Military Law," ante; As to their killing Game, see "Game,"* Vol. III.

Solicitations to Commit Offences. *See "Attempts,"* Vol. I.

Son Assault. *See "Assault,"* Vol. I.

South Sea Bonds. *Stealing of, see "Larceny,"* Vol. III.

Sovereigns. *See "Coin,"* Vol. I.

Special Case. *See "Sessions," ante,* p. 980.

Spirituous Liquors—*As to the Excise on, see "Excise,"* Vol. II. *Hawking of*—*see "Hawkers,"* Vol. III. *Selling in small Quantities*—*see "Alehouse,"* Vol. I. p. 119. *Selling in Gaols*—*see "Gaols,"* Vol. II.

Spring-Guns.

As to the common-law right to set spring-guns, and the statutory enactment of 7 & 8 Geo. IV. c. 18, &c. *see "Game,"* Vol. III. p. 256, 257.

Squibs. *See "Fireworks,"* Vol. III.

Stabbing. *See ante, "Malicious Injuries to Persons," "Homicide,"* Vol. III

Stage Coaches and Post Horses.

[2 & 3 Will IV. c. 120; 3 & 4 Will. IV. c. 48; 6 & 7 Will. IV. c. 45; 6 & 7 Will. IV. c. 65; 2 & 3 Vict. c. 66; 5 & 6 Vict. c. 79.]

As to carriers and their liabilities, &c., *see "Carriers,"* Vol. I.

As to the tolls of stage coaches, *see "Highways, Turnpike,"* Vol. III. p. 708 to 743.

As to the liability of an inkeeper to furnish post horses, *see "Alehouse,"* Vol. I. p. 115.

As to stating the proprietorship of partners in stage coaches, *see "Indictment,"* Vol. III. p. 886.

As to hackney coaches, *see "Hackney Coaches,"* Vol. III

Stat. 5 & 6 Vict. c. 80 repeals the duties of assessed taxes on stage coachmen and guards, and on certain carriages kept to be let for hire; and grants new duties in lieu of them, *see "Taxes,"* Vol. VI.

Stat. 2 & 3 Will. IV. c. 120, intituled "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage 2 & 3 Will. IV. c. 120.

2 & 3 Will. IV. c. 120.

Carriages and on Horses let for Hire in Great Britain, and to grant other Duties in lieu thereof; and also to consolidate and amend the Laws relating thereto," [16th August, 1832,] reciting, "Whereas it is expedient to repeal the duties under the management of the commissioners of stamps in respect of stage carriages and of horses let for hire in Great Britain, and to grant other duties in lieu thereof, and also to consolidate and amend the laws now in force relating to such stage carriages and horses as aforesaid respectively," enacts, "That the several acts and parts of acts next hereinafter mentioned, or so much and such part and parts thereof as are now in force, shall respectively remain and continue in force until and upon the 10th day of October in the year of our Lord 1832, and shall from thenceforth respectively cease, determine, and be repealed; (that is to say,) the 25 Geo. III. c. 51, so much of 44 Geo. III. c. 98, as relates to the painting upon every carriage to be employed as a public stage coach or carriage for the purpose of conveying passengers for hire to and from different places in Great Britain certain words in the last-recited act mentioned, and to the number of inside passengers to be carried in any such carriage; the 50 Geo. III. c. 48, so much of 53 Geo. III. c. 108, ss. 21 & 22 as relates to the duties granted on coaches and other carriages employed as public stage coaches, or carriages for conveying passengers for hire, and on licences for keeping the same; and also so much of the said last-recited act as relates to the time of granting such licences, or of their continuing in force; and so much of 55 Geo. III. c. 185, ss. 2, 3, 6, 11 & 12, as relates to the duties on stage coaches and on licences for keeping stage coaches, and as relates to the offences in the said act mentioned respecting such duties and licenses; and also so much of the said last-recited act as relates to licences to be taken out by the owners of hackney coaches employed as stage coaches, and to the owners or drivers of stage coaches taking up passengers in manner by the said last-recited act allowed; and the whole of 3 Geo. IV. c. 95; and the 7 Geo. IV. c. 33; and so much of 9 Geo. IV. c. 49, ss. 16, 17 & 18, as relates to stage coaches or other carriages kept, used, or employed to convey passengers for hire, or to the recovery of any fine, penalty, or forfeiture made or incurred with relation to any such stage coaches or carriages; and so much of 2 Geo. III. c. 15, s. 9, as relates to the penalty therein imposed upon the driver of any fish carriage for taking up or suffering any passenger to be carried or conveyed in or by any such fish carriage; and the said several acts and parts of acts hereinbefore specified shall be and the same are hereby severally repealed accordingly, save and except only so far as is hereinafter in that behalf provided."

Repeal of acts.

Sect. 2 repeals the 4 Geo. IV. c. 62, relating to the duties on horses let for hire, after the 31st of January, 1833.

Sect. 3 excepts out of the repeal such parts of the recited acts as repeal any former acts; and arrears of duty, and penalties, &c., incurred.

Sect. 4 grants duties specified in schedule (A.) thereto annexed, but this is repealed by 5 & 6 Vict. c. 79, *post*, 1124, and new duties substituted.

Definition of a stage carriage.

Sect. 5. "Every carriage used or employed for the purpose of conveying passengers for hire to or from any place in Great Britain, and which, when passing along any highway or other road, shall travel at the rate of three [same extended by 6 & 7 Will. IV. c. 65, s. 7, *infra*, to four miles] miles or more in the hour, shall, without regard to the form or construction thereof, be deemed and taken to be a stage carriage within the meaning of this act; provided the passengers, or any one or more of them, thereby conveyed, shall be charged or shall pay separate and distinct fares, or a separate and distinct fare, or shall be charged or pay at the rate of separate and distinct fares, for their respective places or seats or his place or seat therein or conveyance thereby; and in all proceedings at law or otherwise, and upon all occasions whatsoever, it shall be sufficient to describe any carriage used or employed as aforesaid by the term 'stage carriage,' without further or otherwise describing the same: Provided always, that the said term 'stage carriage' shall not be deemed to extend

to or include any carriage used or employed as aforesaid wholly upon any railway, nor to any carriage drawn or impelled by the power of steam, or otherwise than by animal power."

2 & 3 Will. IV. c. 120.

By 6 & 7 Will. IV. c. 65, s. 7, reciting that, by the 2 & 3 Will. IV. c. 120, it is enacted, "That every carriage used or employed as therein mentioned, and which when passing along any highway or other road shall travel at the rate of three miles or more in the hour, shall be deemed and taken to be a stage carriage within the meaning of the said act, provided as therein also mentioned: and whereas it is expedient to permit certain carriages to travel at a rate exceeding three miles in the hour without being deemed to be stage carriages;" it is enacted, "That from and after the passing of this act, no carriage shall by reason of the rate of travelling be deemed or taken to be a stage carriage within the meaning of the said act unless the same shall travel at the rate of four miles or more in the hour."

Carriages for carrying passengers travelling at a rate less than four miles an hour not to be deemed stage carriages.

By 2 & 3 Will. IV. c. 120, s. 6, "It shall not be lawful for any person to keep, use, or employ any stage carriage, unless such person shall have a licence in force so to do, granted to him under the authority of this act by two or more of the commissioners of stamps, or by some person duly authorized by the said commissioners to grant such licence, nor unless there shall be fixed on such carriage, in the manner hereinafter mentioned, the numbered plates by this act directed to be delivered with every such licence, nor unless the several particulars by this act directed to be painted on every such carriage shall be painted thereon; any thing in any other act contained to the contrary thereof notwithstanding."

Stage carriages not to be used without licences, nor without plates, nor without having painted thereon the particulars hereby required.

Sect. 7. "In any action, information, or other proceeding for the recovery of any duty or penalty incurred under this act in respect of or with relation to any stage carriage, if evidence shall be given that the carriage in respect of which or in any manner relating to which any such action, information, or proceeding shall be commenced or prosecuted was seen travelling or going upon any highway or other road, having fixed or placed thereon any numbered plate provided or used in pursuance of this or any former act relating to stage carriages, or having thereupon any plate resembling or intended to resemble any such plate as aforesaid, or having painted upon such carriage any of the particulars required by this act to be painted upon stage carriages, such carriage shall be deemed and taken to be a stage carriage; and such evidence as aforesaid shall be received as sufficient proof that such carriage was kept, used, and employed for the purpose of conveying passengers for hire as a stage carriage within the meaning of this act, unless the contrary be proved; and that in all such actions, informations, and proceedings as aforesaid the person named or described in the licence granted with or relating to the number of the plate (if any there shall be) fixed or placed upon any such carriage, whether such licence shall be in force or not, or the person whose name (if any) shall be painted on any such carriage, shall for the purposes of this act (unless the contrary be proved) be deemed to be the person to whom such carriage doth belong."

Carriages with plates or particulars painted thereon to be deemed stage carriages.

Sect. 8. "Any two or more of the commissioners of stamps, or any person duly authorized by the said commissioners, shall grant a licence under their or his hands or hand to any and every person of the age of twenty-one years or upwards who shall apply for such licence in the manner hereinafter mentioned, to keep, use, and employ any stage carriage in any part of Great Britain; and that every such licence to any person for or in respect of any stage carriage which shall go from or shall come to London or Westminster, or from or to any place within the county of Middlesex, or the weekly bills of mortality, shall be granted at the head office for stamps in Westminster; and every such licence to any person for or in respect of any stage carriage which shall go from or shall come to any other town or place within Great Britain, shall be granted, either at the said head office, or by the person duly authorized by the said commissioners to grant such licences for the district within which the town or

By whom and where stage carriage licences shall be granted.

2 & 3 Will. IV. c. 120.

place is situated from which or at which such stage carriage shall begin or end its journey; and the said commissioners, or the person so authorized to grant such licence as aforesaid, shall at the time of granting every such licence for the first time, and at all other times when necessary, deliver to the person applying for such licence the numbered plates hereinafter required to be fixed upon the stage carriage mentioned in such licence:—Provided always, that no person shall be entitled to the grant or renewal of any such licence who at the time of applying for such grant or renewal shall be in arrear for any duties payable under this or any former act for or in respect of any stage carriage, or who shall not have paid or satisfied any penalty in which he shall have been convicted or for which judgment shall have been obtained against him in any action, information, or other proceeding under this or any former act relating to stage carriages; and it shall be lawful for the commissioners of stamps or their officer to refuse to grant or renew any such licence to any such person until such arrear of duty, and such penalty or mitigated penalty, shall have been fully paid and satisfied; any thing herein contained to the contrary notwithstanding."

Persons in arrear for duties or penalties shall not be entitled to licences until payment of such arrears.

Persons applying for stage carriage licences to sign a requisition for same.

Sect. 9. "Before any licence, whether original or supplementary, shall be granted or renewed under the provisions of this act for or in respect of any stage carriage, a requisition for such licence, in such form as the commissioners of stamps shall from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the stage carriage in respect of which such licence shall be applied for; and in every such requisition there shall be truly specified and set forth the christian name and surname and place of abode of the person applying for such licence, and of every person who shall be a proprietor or part proprietor of such carriage, or who shall be concerned, either solely or in partnership with any other person, in the keeping, using, or employing of such carriage; and in case any person, on applying for any such licence, shall neglect or omit to specify truly in such requisition as aforesaid the name of any person who shall be a proprietor or part proprietor of such carriage, or who shall be concerned as aforesaid in the keeping, using, or employing of such carriage, every person so offending shall forfeit 10*l*."

Penalty for omitting name of any proprietor.

Persons inserting a false name, &c., in a requisition or licence, guilty of a misdemeanor.

Sect. 10. "If any person applying for or procuring or attempting to procure any licence under this act for or in respect of any stage carriage shall use or employ any false or fictitious name or place of abode, or other false or fictitious description of any person or supposed person, or shall insert or cause to be inserted in any requisition for any such licence, or in any such licence, any false or fictitious name or place of abode, or other false or fictitious description of any person or supposed person as being the proprietor or part proprietor of the stage carriage for or in respect of which such licence shall be applied for or procured, or shall wilfully or knowingly insert or cause to be inserted in any such requisition, or in any such licence as aforesaid, the name of any person as being a proprietor or part proprietor of such carriage who shall not at the time of the application for such licence be in fact a proprietor or part proprietor of such carriage, the person so offending shall be guilty of a misdemeanor, and, being convicted thereof, he shall be liable to be punished by fine or imprisonment, or by both, as the court shall award; such imprisonment to be in the common gaol or house of correction, and either with or without hard labour, as the court shall think fit; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner."

Particulars to be specified in stage carriage licences.

Sect. 11. "There shall be specified in every licence to be granted or renewed under this act for or in respect of any stage carriage the following particulars, or such of them as the commissioners of stamps shall think proper; (that is to say,) the christian name and surname and the place of abode of the person and of every person who shall be a proprietor or part proprietor of the stage carriage in respect of which such licence shall be granted, or who shall be concerned, either solely or in partner-

ship with any other person, in the keeping, using, or employing of such carriage, the number painted or marked on the plates to be fixed on such carriage, the names of the extreme places from which and to which such carriage shall be authorized by such licence to go or pass, and the route or line of road by which such carriage shall travel to or from such extreme places, and also the distance in miles or fractional parts of a mile, or both, as the case may require, between such extreme places, the number of journeys, and the total number of miles upon which the duty granted by this act shall be assessed, and which such carriage shall be authorized to perform or to travel, either separately or in conjunction with one or more other licensed stage carriage or carriages, within the day, week, or month, as the said commissioners may think fit, the days of the week on which such carriage shall be authorized to be used, and the greatest number of passengers to be conveyed by such carriage, distinguishing (when the same is intended to convey both inside and outside passengers) the number to be carried on or about the outside from the number to be carried in the inside of such carriage; and a copy of every such licence, and of every indorsement which shall from time to time be made thereon, shall be kept at the office or place from which such licence shall be issued, in order that any person may have a copy thereof, paying 1s. for the same."

2 & 3 Will. IV c. 120.

Copy of licence to be given on payment of 1s.

Sect. 12. Provided always, "That it shall be lawful for the commissioners of stamps, where they shall deem it expedient, at the time of granting any such licence as aforesaid, to compound with any person, on such terms and conditions as they shall think fit, for the duties which may become payable in respect of such stage carriage; and then and in such cases, instead of the number of journeys and the total number of miles which such carriage shall be authorized to perform within the day, week, or month, there shall be specified in the licence granted for or in respect of such carriage the amount of the composition, per day, week, or month, to be paid for and in respect of such carriage in lieu of the duties specified in the said schedule to this act annexed, together with such stipulations and conditions as the said commissioners shall think proper for better securing the payment of such composition."

Duties may be compounded for.

In case of a composition, the amount to be specified in the licence.

By sect. 13, carriage licences granted under former acts are continued until 10th October, 1832. The section then enacts, "That every such licence as aforesaid, whether original or supplementary, which shall be granted, under the authority of this act, after the 10th day of October and before the 1st day of November in the said year 1832, shall be dated on the 11th day of October in the same year; and every such licence which shall be granted after the 31st day of October in the said year 1832, and before the first Monday in the month of October in the year 1833, shall be dated on the day on which the same shall be granted; and every such licence granted as aforesaid under the authority of this act shall have effect and continue in force from the day of the date thereof until the first Monday in the month of October 1833, (unless sooner discontinued in manner hereinafter mentioned,) and no longer; and every such licence as aforesaid which shall be granted at any time on or after the first Monday in October and before the 1st day of November in the year 1833, or in any subsequent year, shall be dated on the first Monday in October in the year in which the same shall be granted, specifying the day of the month; and every such licence which shall be granted at any other time than as aforesaid in the said last-mentioned year, or in any subsequent year, shall be dated on the day on which the same shall be granted; and every such licence as aforesaid which shall be dated on the first Monday in any month of October, or on any other day in any year, shall have effect and continue in force from the day of the date thereof until the first Monday in the month of October then next ensuing, or until the Monday next ensuing the granting of such licence, if such Monday shall be the first Monday in October (unless sooner discontinued as aforesaid), and no longer; and every such licence shall be renewed from year to year, by

Commencement and termination of licences granted under this act, [but see now the 5 & 6 Vict. c. 79, s. 8, *post*, 1125, altering the amount of the licences.]

Licences to be renewed yearly.

2 & 3 Will. IV. c. 120.

the grant of an original licence, on payment of the duty of 5*l.* by this act charged thereon." (*See* 5 & 6 Vict. c. 79, s. 8, *post*, 1125.)

Mode of discontinuing stage carriage licences.

Sect. 14. "When any person to whom any licence shall have been granted under this act for or in respect of any stage carriage shall determine to discontinue or give up such licence, such person shall give notice in writing of such his determination to the commissioners of stamps or to the officer by whom such licence was granted; and when the time for giving up such licence according to such notice shall have elapsed, and such licence shall have been given up to the said commissioners or officer, such licence shall cease and determine, and shall be no longer in force; and the person so previously licensed shall not be charged with the duties payable according to the terms of such licence, in respect of such stage carriage, for any period subsequent to the expiration of such notice and the re-delivery of such licence, provided he shall within seven days next after the expiration of such notice deliver up to the said commissioners or officer the numbered plates mentioned in such licence."

Plates to be delivered up on the expiration of licences, or in default the duty to continue payable.

Sect. 15. "Whenever any licence granted under this act for or in respect of any stage carriage shall cease or expire, or be discontinued, the person to whom such licence shall have been granted shall, within seven days next after the expiration or discontinuance thereof, deliver up to the commissioners of stamps, or to the officer by whom such licence was granted, the numbered plates mentioned in such licence, or in default thereof such person shall continue to be subject and liable to the payment of the same rate of duty as under this act was payable according to the terms of such licence before the expiration or discontinuance thereof, and such person shall be chargeable and charged with the payment of the said duty according to the time of delivering up the said plates to the said commissioners or officer; and such duty shall be recoverable by the same ways and means as if such licence had continued in force."

Supplementary stage carriage licences may be granted in certain cases.

Sect. 16. "Whenever any person to whom any original licence chargeable under this act with the duty of 5*l.* shall have been granted for or in respect of any stage carriage shall afterwards, and within the term for which such licence was granted, take any other person into partnership in the keeping, using, or employing of such stage carriage; and whenever, after the granting of any such original licence as aforesaid to any persons in copartnership, and within the period for which the same was granted, any alteration shall take place in such copartnership; and also whenever any person to whom any such original licence as aforesaid shall have been granted shall afterwards, and within the period for which the same was granted, be desirous of increasing or decreasing the number of journeys specified in such licence to be performed or travelled by such stage carriage in the day, week, or month, as the same may be specified in such licence, or of altering the route or line of road by which such stage carriage shall travel to or from the extreme places from which and to which such stage carriage shall be authorized by such licence to go or pass, or of altering such extreme places by extending or shortening the distance which such stage carriage shall be authorized to perform or travel on the same line of road, or of altering the days of the week on which such stage carriage shall be authorized to be used, or of increasing or decreasing the number of passengers to be conveyed by such stage carriage, either in the whole or in the inside or on or about the outside thereof, then and in any of the several cases aforesaid, upon the surrender and delivery of any such original licence, or of any existing supplementary licence which may have been taken out in lieu thereof, to the commissioners of stamps, or to the officer by whom the same was granted, the said commissioners or officer shall grant to such person or copartnership of persons a supplementary licence, with any such alterations or variations as aforesaid, in lieu of the licence so surrendered and delivered up, on payment only of the duty of 1*s.* by this act charged on such supplementary licence; and in like manner a supplementary

licence shall be granted and taken out from time to time as often as any of the several cases aforesaid shall occur during the period for which any such original licence shall have been previously granted." (*See*, further, the 5 & 6 Vict c. 79, s. 9, *post*, 1126.)

2 & 3 Will. IV. c. 120.

Sect. 17. "Whenever any such supplementary licence as aforesaid shall be granted in lieu of any pre-existing licence such pre-existing licence shall thenceforth cease and determine, and such supplementary licence shall be deemed to be the only licence then in force; and it shall not be necessary upon any occasion to prove that any original licence had been previously taken out for or in respect of the stage carriage for which such supplementary licence shall have been granted, nor shall the circumstances under which such supplementary licence was issued be required to be proved, nor the regularity of the issuing thereof in any manner questioned."

Such supplementary licence to be then the only licence in force.

Sect. 18. "The duty payable in respect of any licensed stage carriage shall be payable and paid to his majesty by the person or persons named as the proprietor or proprietors in the licence relating to such stage carriage; and in all actions, informations, and other proceedings for the recovery of any such duty each and every of the said proprietors severally, or the whole, or any two or more of them jointly, may be charged with and prosecuted for the same; and the amount of the rate of duty imposed by this act upon or in respect of any such carriage, computed upon the number of miles which such carriage shall be authorized by such licence to travel in the day, week, or month, as the case may be, or the amount of the composition specified in such licence, computed upon the time which shall have elapsed since the date thereof, shall be deemed to be the amount of duty due and payable in respect of such carriage (unless the same shall be proved to have been paid); and proof of the granting of any such licence, and of the terms thereof, shall in all cases be sufficient evidence of the duty due, without any evidence being given of the actual keeping, using, or employing of the stage carriage in such licence mentioned by the person named therein as the person to whom the same shall have been granted: Provided always, that nothing herein contained shall extend to exonerate from liability to the payment of such duty any proprietor whose name may not be inserted in such licence, but that every such proprietor may be charged with and prosecuted for such duty either alone or jointly with any one or more other proprietor or proprietors, whether named in such licence or not."

Duty to be payable by the person named in licence;

and to be computed according to terms of licence.

Evidence of duty due.

Sect. 19. Provided always, "That it shall be lawful for the commissioners of stamps, or their proper officer, to examine into all the circumstances relative to the number of journeys or the number of miles actually performed or travelled by any stage carriage, and in cases where the same shall be less than the number expressed in the licence relating to such carriage it shall be lawful for the said commissioners, or their said officer, to make such allowances of duty as to them respectively shall appear to be just and proper to the person licensed in respect of such carriage, upon proof being made to the satisfaction of the said commissioners or officer as to the number of journeys or miles actually performed or travelled by such carriage; and it shall also be lawful for the said commissioners to make such regulations with respect to such carriages, where any such allowance shall be applied for, as they shall from time to time deem necessary or expedient, as well for effectually securing the duties on such carriages as for doing justice to the owners or proprietors thereof, anything herein contained to the contrary notwithstanding; and if any person licensed as aforesaid, in any account to be rendered by him in pursuance of this act, or of any such regulations as aforesaid, of the number of journeys or miles actually performed or travelled by any stage carriage, shall neglect or omit to insert therein any journey actually performed by such carriage, or shall insert therein a less number of miles than shall have been actually travelled by such carriage during the period for which such account shall be rendered, he shall forfeit 50*l*."

Commissioners may make allowance for duties on journeys not performed by stage carriage.

Penalty for rendering a false account of journeys performed by stage carriage.

Sect. 20. "The person to whom any such licence as aforesaid shall have

When and where duties to be paid.

2 & 3 Will. IV. c. 120.

been granted at the head office for stamps, or some person on his behalf, shall, on the first Monday in every calendar month, between the hours of ten in the morning and three in the afternoon, unless the same be a holiday, and then on the next day not being a holiday, pay the whole of the duty charged and accrued due under or by virtue of such licence within the four or five preceding weeks, as the case may be, in respect of the stage carriage mentioned in such licence, to the receiver general of stamp duties, or to the proper officer for the time being for receiving stage carriage duties at the said head office; and that the person to whom any such licence as aforesaid shall have been granted at any other place than the said head office, or some person on his behalf, shall at the periods aforesaid pay the whole of the duty charged and accrued due as aforesaid, under or by virtue of such last-mentioned licence, to the person by whom such licence shall have been granted, or to such other person as the commissioners of stamps shall appoint or authorize to receive the same."

Stage carriage duties not exceeding 50*l.* recoverable by distress.

Sect. 21. "If any person to whom any licence shall be granted under the provisions of this act, to keep, use, or employ any stage carriage shall make default in payment of any sum of money not exceeding in amount the sum of 50*l.*, which shall become due or payable in respect of such licence, at the time and in the manner by this act appointed for payment thereof, it shall be lawful for any two of the commissioners of stamps to grant a warrant to any constable or other peace officer, or to any officer of stamp duties, or other person named in such warrant, directing him to distrain every such person so making default as aforesaid by his goods and chattels, and also to seize and take the carriages, horses, harness, and other articles and things by this act made subject and liable to such duty, for the amount of the duty so due or payable as aforesaid, and of all the costs, charges and expenses incident or relating to the taking and keeping of such distress; and it shall be lawful for such constable, or for any such officer or other person as aforesaid, to make such distress and seizure accordingly, and the distress so taken to detain and keep for the space of five days, at the costs and charges of the person distrained: and if the amount of such duty, and of all the costs, charges, and expenses aforesaid, shall not be paid within such space of five days, then such constable or officer or other person shall cause the goods and chattels, carriages, horses, harness, and other things so seized or taken, to be sold in the manner directed by this act, and shall render the overplus, if any, of the money arising by the sale thereof, after deducting and retaining the amount of such duty, and all the costs, charges, and expenses aforesaid, as well as the charges and expenses of the sale, to the person so distrained, or to the owner of the carriages, horses, harness, or other things so seized and taken as aforesaid; and for the purpose of taking such distress it shall be lawful for such constable or other peace officer, or for such officer of stamp duties, or other person named in such warrant, in the presence of any constable or other peace officer, where any refusal or resistance shall be made, to break open in the day-time any house, building, or other place where any such carriages, horses, harness, or other articles or things, or any goods or chattels, to be seized or taken under such warrant as aforesaid, shall be."

Duties to be paid in respect of unlicensed stage carriages, over and above the penalty.

Sect. 22. "If any person shall keep, use, or employ any stage carriage without having such licence as by this act is required, such person shall, over and above any penalty which may be incurred under this act, be accountable to his majesty for the same duty as such person would have been chargeable with and liable to pay for or in respect of such carriage in case such person had obtained a proper licence for the same under this act, for the particular journey, distance, or number of miles, and for the number of journeys in the day, week, or month, and for the number of passengers, which such person shall at any time have advertized or otherwise notified or expressed that such carriage was intended or had been or was to be employed to go or carry respectively, or which such carriage shall actually have gone or carried respectively, at any one period during which

such carriage shall have been kept or used, at the election of the said commissioners, and that every person so keeping, using or employing such carriage, shall be chargeable with such duty for the same from the time when such carriage was first kept or used without such licence as aforesaid, down to the time when any licence shall be taken out for the same by such person, or to the time when the use thereof shall be absolutely discontinued, and also with the duty which would have been payable for the proper licence which such person ought to have taken out in respect of such carriage as aforesaid." 2 & 3 Will. IV. c. 120.

Sect. 23. "It shall not be lawful for any person licensed in respect of any stage carriage to use, have, or keep more than one pair of plates under or by virtue of any one licence, but that for every pair of plates there shall be a separate and distinct licence." Separate licence required for every pair of plates.

Sect. 24. "Whenever the number or device on any plate or plates shall become obliterated or defaced, so that the same shall not be distinctly visible and legible, and also whenever any plate or plates shall be proved to the satisfaction of the commissioners of stamps to have been lost or mislaid, the person to whom the licence relating to any such plate or plates shall have been granted shall surrender and deliver up such of the said plates as he shall have in his possession, and shall produce such licence to the said commissioners or to their proper officer, and such person shall then be entitled to have new plates delivered to him in lieu of the plates so delivered up or lost or mislaid, upon payment for the use of his majesty, of any sum, in the discretion of the said commissioners, not exceeding the sum of 10*s.* for each pair of plates; and where the number on such new plates shall be different from the number on such plates so delivered up or lost or mislaid, the said commissioners or officer shall indorse and sign upon the licence a memorandum of the issuing of such new plates in lieu of the plates in such licence mentioned: Provided always, that if any such plate or plates which shall have been proved as aforesaid, or represented to have been lost or mislaid, shall afterwards be found, the same shall forthwith be delivered up to the said commissioners; and if any person in or into whose possession or power any such plate or plates as last aforesaid shall be or come shall refuse or neglect for the space of five days to deliver up the same to the said commissioners, he shall forfeit 20*l.*" New plates to be delivered in lieu of defaced or lost plates.

Sect. 25. "Whenever, in the opinion of the commissioners of stamps or their proper officer, it shall be expedient to recall any plates for the purpose of changing the same for any other plates, and such commissioners or officer shall give notice to the person or to any one of the persons to whom the licence relating to such plates shall have been granted that the said commissioners or officer do or doth by such notice recall such plates, the person to whom such licence shall have been granted shall, within one week after such notice, deliver up such plates, and produce the licence relating to the same, to the said commissioners or their proper officer, and shall also apply to the said commissioners or such officer for new plates, and thereupon the said commissioners or such officer shall deliver to the person so applying for the same new plates in lieu of the plates so as aforesaid recalled; and where the number on such new plates shall be different from the number on such recalled plates the said commissioners or officer shall endorse and sign upon the licence a memorandum of the surrender of the plates in such licence mentioned, and of the granting of such new plates in lieu thereof, and from thenceforth such licence shall be deemed to relate to such new plates in the same manner as if the number thereof had been originally inserted in the body of such licence." Commissioners may recall and change plates.

Sect. 26. "The plates by this act required to be fixed upon every stage carriage shall be fixed, one on each side of such carriage, upon the upper fore quarter at the lower angle adjoining to the door, or if there be no upper fore quarter, then on the centre panel of each door in the side of such carriage, or if there be a door only in one side of such carriage, then one of such plates shall be fixed upon the centre panel of that door, and the other upon some conspicuous part of the opposite side of such carriage, or if How plates are to be placed upon stage carriages

2 & 3 Will. IV. c. 129.

there be no door in either side of such carriage, then one of such plates shall be fixed upon some conspicuous part of each side of such carriage; and if it shall happen that the commissioners of stamps, or their proper officer, shall be dissatisfied with the position of any plate upon any such carriage, and shall direct such plate to be fixed upon some other conspicuous part of such carriage, such plate shall be fixed accordingly upon such carriage in compliance with such direction."

Penalty for keeping, using, &c., any stage carriage without a licence or without plates, or with recalled plates.

Sect. 27. "If any person shall keep, use, or employ, or shall be concerned as proprietor [sect. 117, *post*, 1121,] or part proprietor in the keeping, using, or employing of any stage carriage, without having a licence in force so to do granted to him under this act, or if any person, whether he shall have any such licence or not, shall keep, use, or employ any stage carriage, such carriage not having placed and fixed thereupon and in the manner directed by this act the numbered plates required by this act to be fixed on stage carriages, or having thereupon any such plate as aforesaid the number or device whereon shall be in any manner obliterated, defaced, or obscured, so that the same shall not be distinctly visible and legible, or if any person to whom any such licence shall have been granted shall, for the space of one week after notice in manner by this act directed to be given to such person that the plates to which such licence shall relate have been recalled, neglect or refuse to deliver up the plates mentioned in such notice, according to the terms thereof, every person so offending in any of the several cases aforesaid shall forfeit 20*l*."

Persons using stage carriages contrary to their licences, or with improper plates, shall be deemed to be using them without licences.

Sect. 28. "If any person to whom any licence shall have been granted in respect of any stage carriage shall permit or suffer such carriage to perform a greater number of journeys or to travel a greater number of miles than shall be mentioned in or allowed by such licence, or to be used on any other day or for the performing of any other journey than shall be mentioned or allowed in or by such licence, or shall fix or place upon such carriage any plate having a number different from the number mentioned in or authorized by the licence in force at the time of using such carriage, such person shall be deemed to be a person keeping, using, and employing a stage carriage without having a licence in force so to do, and shall accordingly be subject and liable to the penalty of 20*l*. by this act imposed in that behalf; and in all actions, informations, or other proceedings against such person for the recovery of such penalty in any of the cases aforesaid it shall be sufficient to charge or allege that such person did keep, use, and employ a stage carriage without having a licence in force so to do granted to him under this act, and it shall not be necessary further or otherwise to state or describe any such offence, nor to prove that such carriage was used or employed for the conveyance of passengers at separate fares."

How offence to be alleged and proved.

Representatives of persons licensed may use stage carriages for thirty days without further licence.

Sect. 29. "Whenever any person to whom any licence shall have been granted for or in respect of any stage carriage shall die, or become bankrupt or insolvent, during the existence of such licence, it shall be lawful for his executor, administrator, or assignee, or trustee, to keep, use, and employ such stage carriage according to the terms of such licence for the space of thirty days next after the death, bankruptcy, or insolvency of the person to whom such licence was granted, without being liable for so doing to the penalty by this act imposed on any person who shall keep, use, or employ any stage carriage without having a licence in force so to do: Provided always, that such executor, administrator, assignee, or trustee shall be liable to and chargeable with the payment of the duty which shall accrue or become payable in respect of such stage carriage from the time of such death, bankruptcy, or insolvency, and shall also be liable to all other the provisions and regulations of this act in the same manner as if such executor, administrator, assignee, or trustee had duly obtained the licence in his own name for the keeping, using, and employing of such stage carriage." (*See* 5 & 6 Vict. c. 79, s. 9, *post*, 1126.)

Plying for hire with carriages

Sect. 30. "If any carriage, whether licensed as a stage carriage or not, shall be found upon or near to any public highway, and any person shall

ply for passengers to be conveyed by such carriage for hire at separate fares, such carriage not having placed and fixed thereupon the numbered plates required by this act to be fixed on stage carriages, the driver [sect. 117, *post*, 1121; *R.* v. *Barker*, 3 *East*, 504,] of such carriage, or the person having the care thereof, or plying for passengers to be conveyed thereby, such driver or person, not being the owner of such carriage, shall forfeit 10*l.*, and if he shall be the owner of such carriage he shall forfeit 20*l.*; and moreover it shall be lawful for any constable or other peace officer, or any officer of stamp duties, without any warrant for that purpose, to apprehend such driver or other person having the care of such carriage or plying for passengers to be conveyed thereby, and to carry and convey him before any justice of the peace having jurisdiction where the offence shall be committed, to be dealt with as hereinafter mentioned; and it shall also be lawful for such constable or other peace officer, or officer of stamp duties, to drive or take the carriage not having such plates, with the horse or horses harnessed thereto or drawing the same, or to cause the same to be driven or taken, to some public greenyard, or some livery stables or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and the justice before whom such driver or other person shall be brought shall hear and determine such offence; and in case the person convicted of any such offence shall be the owner of any such carriage, and if the said penalty of 20*l.*, together with all costs and expenses, and the expenses of taking such carriage and horse or horses to and keeping the same at such greenyard, stables, or other place, shall not be fully paid or discharged within five days after such conviction, such carriage and horse or horses, together with the harness used therewith, shall be sold by order under the hand of such justice, and the surplus (if any) of the produce of such sale, after deducting therefrom the said penalty, costs, and expenses, and also the expenses of such sale, shall be rendered to such owner; but in case the person so convicted shall not be the owner of such carriage, then on default being made in payment of the said penalty of 10*l.* such justice shall commit the offender to the common gaol or house of correction for the space of three calendar months, unless such last-mentioned penalty shall be sooner paid; and such justice shall give an order for the delivering up of the carriage, and horse or horses, and harness, to the owner thereof, on his paying the expenses of taking and keeping the same; and in case of his refusal to pay such expenses forthwith, then such carriage, and horse or horses, and harness, or a sufficient part thereof to defray such expenses, shall be sold by order under the hand of such justice; and after payment thereout of all such expenses as aforesaid, together with the expenses of such sale, the surplus (if any) of the produce of such sale together with such part of the carriage, and horse or horses, and harness, as shall remain unsold, shall be rendered and restored to the owner." (See this enactment amended in part by 5 & 6 Vict. c. 79, s. 11, *post*, 1127.)

2 & 3 Will. IV. c. 120.

not having plates thereon.

[Amended by 5 & 6 Vict. c. 79, s. 11, *post*, 1127.]

Offenders may be apprehended and conveyed before a justice.

Carriages may be driven to greenyard or other place for safe custody.

Sect. 31. "From and after the passing of this act it shall be lawful for the proprietor or driver of any stage carriage duly licensed by the commissioners of stamps, and having thereon the proper numbered plates or plate required by law to be placed on stage carriages, or for any other person, to stand or ply with such carriage for passengers to be carried for hire, and to take up, convey, and set down such passengers with or from such carriage at any place either within the distance of five miles from the general post-office in the City of London or elsewhere, any thing contained in an act passed in the last session of parliament, for amending the laws relating to hackney carriages, notwithstanding; provided that for this purpose such stage carriage shall not deviate from the proper route or line of road, if any shall be specified or described in the licence relating to such stage carriage, or shall not go beyond the limits allowed by such licence."

Licensed stage carriages exempt from provisions of acts relating to hackney carriages.

Sect. 32. "If any person shall forge or counterfeit, or shall cause or procure to be forged, counterfeited, or resembled, any numbered plate

Forging stage carriage plates,

2 & 3 Will. IV. c. 120.

&c., a misdemeanor.

directed to be provided, or which shall have been provided, made, or used in pursuance of this act or of any former act relating to the duties payable in respect of stage carriages, or shall wilfully fix or place, or shall cause or permit or suffer to be fixed or placed, upon any stage carriage or other carriage, any such forged or counterfeited plate, or if any person shall sell or exchange or expose to sale or utter any such forged or counterfeited plate, or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of any such forged or counterfeited plate, knowing such plate to be forged or counterfeited, every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence as aforesaid, shall be adjudged guilty of a misdemeanor, and being thereof convicted shall be liable to be punished by fine or imprisonment, or by both, such imprisonment to be in the common gaol or house of correction, and either with or without hard labour, as the court shall think fit; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner; and it shall be lawful for any officer of stamp duties, or for any constable or other peace officer, or any toll-gate keeper, to seize and take away any such plate, in order that the same may be produced in evidence against such offender, or be disposed of as the commissioners of stamps shall think proper."

Plates detained after expiration of licences, or used by persons not having licences in force, or recalled plates, may be seized.

Sect. 33. "If after the expiration or discontinuance of any licence granted to any person under any former act relating to stage carriages, or under this act, such person shall use, detain, or have in his possession the numbered plate or plates mentioned in such licence, or shall neglect to deliver the same to the commissioners of stamps or to their proper officer, or if any person shall use or detain or have in his possession any numbered plate or plates without having a licence in force granted to him under any such act as aforesaid, and relating to such plate or plates, or if any person shall use or detain or have in his possession any numbered plate or plates which shall have been recalled by the commissioners of stamps or their proper officer, whether the licence relating thereto shall be in force or not, it shall be lawful for any officer of stamp duties, or for any constable or other peace officer, or for any toll-gate keeper, to seize and take away any such plate or plates wheresoever the same may be found, in order to deliver the same to the said commissioners; and for the purpose of seizing and taking away any such plate or plates, or any forged or counterfeited plate or plates, it shall be lawful for such officer of stamp duties, constable, peace officer or toll-gate keeper, to stop any stage carriage or other carriage upon which the same may be placed; and any person who shall molest, obstruct, or hinder such officer of stamp duties, constable, peace officer, or toll-gate keeper in seizing or endeavouring to seize or take away any such plate or plates as aforesaid shall forfeit 20*l.*"

Penalty for obstructing officers seizing such plates.

Penalty for carrying a greater number of passengers than authorized by licence, 5*l.* for each passenger above number.

Sect. 34. "If the number of passengers at any one time conveyed in, upon, or about any licensed stage carriage shall be greater in the whole than the number of passengers which the licence granted in respect of such carriage shall authorize or allow to be conveyed thereby, or if the number of passengers at any one time conveyed in the inside of such stage carriage, or upon or about the outside thereof, shall be greater respectively than the greatest number of inside or outside passengers respectively specified in or upon such licence and allowed thereby, the person to whom such licence shall have been granted shall forfeit 5*l.* for every passenger so conveyed above the number allowed by such licence to be conveyed in the whole, or in the inside, or on or about the outside of such carriage respectively; and the driver of such stage carriage at the time when such offence shall be committed shall also forfeit 5*l.*" (But see now the 5 & 6 Vict. c. 79.)

Two children under seven years old reckoned as one passenger.

Sect. 35. Provided always, "That no child or children in the lap shall be counted as a passenger or passengers under any of the clauses or provisions of this act or of the schedule (A.) hereunto annexed; and that no

child not in the lap, but under seven years of age, shall be so counted as aforesaid, unless there shall be more than one such child; and if there shall be more than one such child not in the lap, but under seven years of age, then two such children shall be accounted equal to one adult person, and considered as one passenger, and so on in the same proportion" 2 & 3 Will. IV. c. 120.

Sect. 36. "No stage carriage shall be used or employed unless nor until there shall be truly painted in words at length, and in legible and conspicuous letters one inch at the least in the height, and of a proper and proportionate breadth, and in a colour different from and opposite to the colour of the ground on which such letters shall be painted, upon some conspicuous part of each sale* of such carriage, and clear of the wheel or wheels thereof, so that the same shall be at all times plainly and distinctly visible and legible, the christian name and surname of the proprietor or of one of the proprietors of such carriage, and also the names of the extreme places from which and to which such carriage shall be licensed to travel or go; and there shall also be painted in manner aforesaid, upon some conspicuous place on the back of such stage carriage, and so that the same shall be at all times plainly and distinctly visible and legible, the greatest number of passengers allowed to be carried in or by such carriage, and also when such carriage shall be licensed to carry both inside and outside passengers, the greatest number of passengers allowed to be taken in the inside, and on the outside thereof respectively, [*see* the 2 & 3 Vict. c. 66, s. 2, *post*, 1124,] and if any person shall use or employ any stage carriage upon which all such particulars as aforesaid shall not be truly painted in such legible and conspicuous letters and in manner aforesaid, or in case such particulars or any of them shall be partially obliterated or defaced from or upon any such carriage, then if any such person shall neglect to paint or cause to be painted again, in manner aforesaid, every particular so obliterated or defaced, such person so offending in any of the cases aforesaid shall forfeit 5*l*." (See now the 5 & 6 Vict. c. 79, s. 14, as to painting the number of passengers the carriage is constructed to carry, *post*, 1128.)

Particulars to be painted on stage carriages (*a*).

* *Sic.*

Penalty for neglecting to paint such particulars.

Sect. 37. "No outside passenger nor any luggage shall be carried on the top or roof of any stage carriage the top or roof of which from the ground shall be more than eight feet nine inches, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel; and if any outside passenger or luggage shall be carried on any such carriage in any manner contrary to the directions aforesaid, the driver of such carriage at the time when such offence shall be committed shall forfeit 5*l*." (*See* 5 & 6 Vict. c. 79, s. 17, *post*, 1129.)

Certain stage carriages shall not take outside passengers or luggage.

The 38, 39, 40, 41, 42 & 44 sections of this act of 2 & 3 Will. IV. c. 120, and which imposed restrictions on and regulated the number of outside passengers and the mode of carrying them, are repealed by the 3 & 4 Will. IV. c. 48.

Sect. 43. "No luggage which shall be carried on the top or roof of any stage carriage drawn by four or more horses shall in any case exceed ten feet and nine inches in height from the ground, nor shall any luggage which shall be carried on the top or roof of any stage carriage drawn by two or three horses only in any case exceed ten feet and three inches in height from the ground, measuring to the highest point of any part of such luggage when placed upon the top or roof of any such carriages respectively; and if any such luggage shall in either of the cases aforesaid exceed the height by this act in that behalf limited, the driver of such carriage at the time when such offence shall be committed shall forfeit 5*l*."

Luggage on top of stage carriage shall not exceed the height herein specified.

(*a*) The inscription on a stage coach of the name of the party licensed to use it, was evidence against him of the ownership, as well in an action as on summary proceedings, under the 25 Geo. III. c. 51; 50 Geo. III. c. 48; and 9 Geo. IV. c. 49, now repealed. (*Barford* v. *Nelson*, 1 *Barn. & Adol.* 571.)

2 & 3 Will. IV. c. 120.

No person to sit on luggage placed on roof.

Sect. 44. "It shall not be lawful for any person to sit or be carried upon any luggage placed on the roof of any stage carriage, nor upon that part of the roof alloted for luggage; and if any person shall sit or be carried upon any luggage or upon that part of the roof allotted for the same, contrary to the provisions of this act, he shall forfeit 5*l.*, and the driver of such carriage at the time when such offence shall be committed shall also forfeit 5*l.*"

Justices, road surveyors, toll collectors, &c., authorized to cause stage carriages and luggage to be measured and passengers to be counted.

Sect. 45. "The proprietor of any stage carriage and the driver thereof shall, when thereunto respectively required by any justice of the peace, or by any constable, or any surveyor of any highway or turnpike road, or by any toll-gate keeper, or any officer of stamp duties, or by any passenger travelling with such carriage, permit and allow such carriage and the luggage thereon to be measured, and the number of passengers in, upon, or about such carriage to be counted; and it shall be lawful for any passenger to require the driver of any stage carriage to stop the same at any toll gate, and to require the toll-gate keeper at such gate to count the number of passengers upon the box, and in, upon, or about such carriage, and to measure and ascertain the height of the luggage thereupon, and to sign a memorandum in writing of the number of such passengers in the inside and on or about the outside of such carriage (distinguishing the number on the box) and of the height of such luggage, and to deliver such memorandum to the person so requiring the number of passengers to be counted or the height of the luggage to be measured; and the toll-gate keeper at every such gate shall provide and keep at such gate a proper measure for measuring the height of any stage carriage and of the luggage thereupon; and if any proprietor of any stage carriage or the driver thereof shall, when thereto respectively required as aforesaid, refuse to permit and allow such carriage and the luggage thereupon to be measured or the number of inside or outside passengers to be counted, or if such driver shall, on being so required as aforesaid, refuse or neglect to stop such carriage at any toll gate for the purpose aforesaid, such proprietor or such driver so refusing or neglecting as aforesaid shall forfeit 5*l.*; and if any toll-gate keeper shall neglect to provide and keep at any such gate a proper measure for the purposes aforesaid, or shall on being thereunto requested as aforesaid, refuse to count the number of such passengers, or to measure and ascertain the height of such luggage, or to sign a memorandum in writing of the number of such passengers or of the height of such luggage in manner hereinbefore directed, or to deliver such memorandum so signed to the person entitled to require the same, or shall sign or give any memorandum in which any of the particulars aforesaid shall not be truly set forth, every such toll-gate keeper so offending shall forfeit 5*l.*: Provided always, that it shall not be lawful for any one passenger to require the driver of any stage carriage to stop the same for any such purpose as aforesaid more than once during any one journey, unless after the counting of such passengers or the measuring of such luggage any additional passenger or passengers shall be taken up, into, or upon such stage carriage, or additional luggage shall be placed on the top or roof thereof during the same journey."

Penalty on the proprietor or driver for refusal.

Penalty on toll-gate keeper neglecting to provide a measure, or refusing to count passengers, or to measure luggage, &c.

Sect. 46, exempting mail coaches from the regulations as to plates, is repealed by the 5 & 6 Vict. c. 79, s. 12, *post*, 1128.

Penalty on driver quitting box before a proper person shall stand at horses' heads;

Sect. 47. "If the driver of any stage carriage drawn by three or more horses shall at any place where such carriage shall stop quit the box of such carriage, or the horses drawing the same, without delivering the reins into the hands of some fit and proper person, or before some fit and proper person shall be placed and shall stand at the heads of the horses or some of them belonging thereto, and shall have the command thereof; or if any person so placed and standing at the heads of such horses shall leave such horses before some other proper person shall be placed and stand in like manner and have the command of such horses, or before the driver of such stage carriage shall have returned and seated himself upon the box and taken the reins; or if the driver of any stage carriage shall

or permitting any

permit any passenger or any person other than himself to drive the horses drawing such carriage; or if the driver of any stage carriage shall quit the box of such carriage without reasonable occasion, or for a longer time than such occasion shall absolutely require; or if the driver of any stage carriage shall suffer any plate or the number on any plate fixed or placed thereon pursuant to this act to be in any manner concealed from public view, or shall suffer any such plate to be inverted, or so fixed or placed that the number thereon shall not be plainly and distinctly legible; or if any person travelling as guard to any stage carriage shall, whilst the horses are harnessed or in the act of being harnessed thereto, and whilst any passenger shall be in, upon, or about such carriage, discharge any fire arms except for the necessary defence of such carriage or of the passengers or luggage being in or about the same; or if the driver or conductor or guard of any stage carriage shall neglect to take due care of any luggage whatsoever carried or to be carried by such carriage; or if any such driver or conductor or guard shall demand or receive for the fare of any passenger more than the sum which such passenger shall be liable to pay, or more than the money properly chargeable for the carriage of any luggage; or if any such driver or conductor or guard shall, when thereto required, neglect or refuse faithfully to account to his employer for all monies received by him in respect of any passenger or any luggage which shall be carried by such carriage; or if any such driver or conductor or guard shall assault or use abusive or insulting language to any person travelling or about to travel or having travelled as a passenger with or by such carriage, or to any person accompanying or attending upon any such passenger in coming to or going from any such carriage, every such offender in any of the several cases aforesaid shall forfeit 5*l.*"

2 & 3 Will. IV. c. 120.

person to drive, or quitting the box;

or concealing or misplacing plates;

on guard discharging fire arms unnecessarily;

or neglecting to take care of luggage, or asking more than proper fare;

or neglecting to account to his employer;

or assaulting or using abusive language to any person.

Sect. 48. "If the driver or conductor or guard of any stage carriage, or any other person having the care thereof, or employed in, upon, or about such carriage, shall, through intoxication or negligence, or by wanton and furious driving, or by or though any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the owner or proprietor of such stage carriage or of any other person, every such person so offending shall forfeit 5*l.*" (*See "Furious driving,"* Vol. III.)

Penalty on driver or guard endangering passengers or property through negligence, &c., 5*l.*

As to death occasioned by furious driving, &c., *see "Homicide,"* Vol. III. p. 798.

Sect. 49. "Whenever it shall happen that the driver or conductor or guard of any stage carriage shall have committed any offence against this act for the commission whereof any penalty is by this act imposed upon such driver or conductor or guard, and not upon the proprietor of such carriage, and such driver or conductor or guard shall not be known, or being known cannot be found, then the proprietor of such carriage shall be liable to every such penalty as if he had been the driver or conductor or guard of such carriage at the time when such offence was committed: Provided always, that if any such proprietor shall make out, to the satisfaction of the justice of the peace before whom any complaint or information shall be heard, by sufficient evidence, not resting on his own testimony, that the offence was committed by such driver or conductor or guard without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued or can accrue to such proprietor therefrom, and that he has used his endeavour to find out such driver or conductor or guard, and given all reasonable information in answer to inquiries respecting him, such justice shall discharge the proprietor from such penalty, and shall levy the same upon such driver or conductor or guard when found."

Owners to be liable for penalties in cases where driver or guard is not known or cannot be found.

Sects. 50, 51 & 52 relate to railways.

Sect. 53. "And for securing the duties granted by this act for and in respect of horses let for hire, and on licences to let such horses, be it enacted, That the said duties on horses let for hire shall be deemed to

On what horses let for hire duties

2 & 3 Will. IV. c. 120

shall be charged (a).

attach and be payable upon or in respect of every horse let for hire, or used either as a saddle horse or for drawing any carriage or vehicle conveying any person, and upon or in respect of every horse used for drawing any mourning coach or hearse, subject to the exemption immediately hereinafter mentioned; (that is to say,) provided always, that the said duties shall not be deemed to attach or be payable upon or in respect of any horse used in drawing any public stage carriage duly licensed under the authority of this act, nor upon or in respect of any horse used in drawing any hackney carriage which shall be duly licensed by the commissioners of stamps or their proper officer, where the same shall be used to go no greater distance than ten miles from the general post-office in the city of London, provided such hackney carriage shall be regularly and constantly used for the purpose of standing and plying for hire in the public streets or roads within the distance of five miles from the said general post-office; nor shall the said duties be deemed to attach or be payable upon or in respect of any horse used in drawing any carriage kept or usually employed for the conveyance of fish."

Exemptions.

Mode of calculating duty where

Sect. 54. "In the case of calculating the amount of duty to be paid when the same is expressed in schedule (A.) to this act annexed to be one-

(a) The following cases were decided on the repealed statutes.

The words *travelling post* should be construed according to the popular acceptation of the term. (*R.* v. *Tooley*, 3 *T. R.* 69; see also *R.* v. *Webber*, 3 *T. R.* 72; *R.* v. *Cook*, 3 *T. R.* 519; *Hanley* v. *Cubberley*, 15 *East*, 257; *Ramsden* v. *Gibbs*, 1 *B. & Cres.* 319.)

Where the defendant, an inn-keeper, contracted with a coach proprietor to furnish him with two additional horses to assist in dragging a stage coach, carrying the mail, up a hill about three quarters of a mile in length, in the course of each journey, for which he was to receive a guinea per week:—Held, that such horses were not subject to the post-horse duty under either of the statutes 25 Geo. III. c. 51, or 44 Geo. III. c. 48 (now repealed), imposing such duty, as the stage-coach duty is to be regulated by the number of passengers such coach is licensed to carry, and not by the horses employed to draw it. (*Dowse* v. *Garrett*, 1 *Bing.* 107; 7 *Moore*, 441, *S. C.*) A coach licensed under a local act, to be used as a stage, is not protected by such licence from the post-horse duties, if hired wholly by an individual to perform a journey; and the proprietor is liable to account to the farmer of those duties for one-fourth of the hire, if let by him to carry out and bring back, notwithstanding such hiring may be to go to and return from some place within the distance and on the road to the place specified in his licence, and although he receive no greater hire than his fare would have been, had he proceeded full on the usual journey as a stage. (*Faye* v. *Cokram*, 1 *Price*, 317.)

A composition for saddle-horses under the assessed tax-act, 59 Geo. III. c. 51, was held not to protect the owner of such horses from his liability to pay the duty imposed by the 1 Geo. IV. c. 88, s. 3, where the same horses were let to hire to be used in travelling. (*Ramsden* v. *Dodgkinson*, 2 *D. & R.* 625.)

Mourning coaches were not exempted under the 44 Geo. III. c. 98, by reason of carrying a corpse, if living persons went along with it. (*White* v. *Beasley*, 1 *B. & Ald.* 166.)

A carriage let to hire for less than twenty-eight days (not being let by the mile or stage), was not required to be numbered by the 48 Geo. III. c. 98. (*Sergeant* v. *Smirthwaite*, *Wightw.* 73.)

In *Smith* v. *Moss*, 3 *M. & Sel.* 15, it was considered that, under a deputation from the commissioners of stamps, authorizing H. and S. collectors of the post-horse duties, to grant licences to persons to let post-horses, a licence by H., for S. and self, was good enough.

In *Radford* v. *M'Intosh*, 3 *T. R.* 632, it was held, in an action brought for penalties on the post-horse act by the farmer of the tax, that it was not necessary for the plaintiff to give in evidence his appointment by the lords of the treasury or the commissioners of the stamp duties authorized by them; and that proof that the defendant had accounted with him as farmer of the duties was held sufficient.

fifth part of the sum charged for the letting of any horse for hire, such one-fifth part shall be calculated upon the whole sum charged for and in respect of such horse so let for hire, and of the carriage (if any) used therewith; and that in calculating the amount of such duty no fractional part of any sum of money amounting to a less sum than one penny shall be charged; and that in all cases the inn, house, or other place at which any person shall be licensed to let horses for hire shall be deemed to be the place of letting for hire of every horse by him so let for hire; and that where any horse which shall have been let for hire at any period of time shall be retained and kept beyond the expiration of the time for which the same shall have been let for hire, without a new hiring, such horse shall be deemed, so far as relates to the duties imposed by this act, to have been retained and kept upon a new hiring, similar to that for which such horse was originally let for hire."

2 & 3 Will. IV. c. 120.

specific sums are charged for hire of horses and carriages.

Horses kept beyond period for which hired to be deemed retained on a new hiring.

Sect. 55. "And be it enacted, That the commissioners of stamps, or any two or more of them, or any collector or other officer of stamp duties duly authorized by the said commissioners for that purpose, shall grant to any person who shall apply for the same a licence to let horses for hire; and all such licences which shall be granted between the 31st day of January and the 16th day of March in any year shall be dated on the 1st day of February in that year, and all such licences which shall be granted at any other time shall be dated on the day on which the same shall be granted; and all such licences respectively shall have effect and continue in force from the day of the date thereof until the 31st day of January next ensuing, both inclusive, and no longer; and no person required by this act to be so licensed shall, unless he shall have obtained a proper licence in that behalf, let any horse for hire to be used in any of the cases aforesaid, upon pain to forfeit for every horse so let for hire as aforesaid the sum of 10*l.*, and every person so licensed shall be deemed a licensed postmaster within the meaning and for all the purposes of this act." (*See* 5 & 6 Vict. c. 79, s. 8, *post*, 1125.)

By whom licences to let horses for hire shall be granted.

Date and continuance thereof.

Penalty on letting without licence.

Sect. 56. "If any licensed postmaster shall die, or become bankrupt or insolvent, it shall be lawful for his executor or administrator, assignee or trustee, or for any other person succeeding to or taking possession of his inn, house, or other place, to let horses for hire in manner aforesaid until such person shall procure such licence as hereinbefore directed; and such person shall not be liable to the penalty imposed upon persons letting horses for hire without being licensed in that behalf, provided such licence be taken out within thirty days next after the death, bankruptcy, or insolvency of any such licensed postmaster; and such person shall be subject to the same rules, regulations, and charges, and shall be liable to account for and pay the duties hereby imposed, in like manner as such deceased or bankrupt or insolvent postmaster was subject and liable to."

On death, &c. of licensed postmaster, his representatives may act under his licence for thirty days.

Sect. 57. "Every collector of the duties on horses let for hire shall from time to time, once in every three months, make out and deliver or transmit to the commissioners of stamps at the head office for stamps in Westminster an account or list, in writing, of all the licences granted by him as such collector to any person to let horses for hire, and such list or account shall specify the christian names and surnames of the persons licensed, their place of residence, the names of the inns (if any), or other places at which they shall be licensed to let horses for hire, and the date of every such licence; and any collector who shall neglect or refuse to deliver or transmit any such account or list in manner aforesaid shall forfeit 100*l.*"

Collectors of duties to transmit accounts of persons licensed to commissioners of stamps.

Penalty for neglect.

Sect. 58. "No licensed postmaster shall by virtue of any such licence be authorized to let any horse for hire at any inn, house, or place not specified in such licence, and that for and in respect of every inn, house, or other place at which any such postmaster shall let any horse for hire a separate and distinct licence shall be taken out by such postmaster under this act; and if any person shall let any horse for hire at any inn,

No licensed postmaster to let horses at more than one place by virtue of one licence.

2 & 3 Will. IV. c. 120.

house, or place not named or described in some such licence granted to him, he shall forfeit 20*l.*"

Licensed postmaster to have the words "Licensed to let Horses for Hire" painted on a sign or board.

Sect. 59. "Every licensed postmaster [*see* sect. 117, *post*, 1121] shall cause his christian name and surname, together with the words 'Licensed to let Horses for Hire,' to be painted in legible characters of at least two inches in height, and of a proper and proportionate breadth, upon a sign or board either hung out from or fixed upon some conspicuous part of the front of the house, stables, or out-offices at every inn, house, or place at which such postmaster may be so licensed, in order to denote that such person is a letter of horses for hire at such inn, house, or place; and any licensed postmaster who shall let for hire any horse at any inn, house, or place without having such sign or board hung out or fixed as aforesaid shall forfeit 5*l.*"

Carriages kept to be let with horses shall be numbered, and have name, &c. of postmaster painted thereon.

Sect. 60. "Where any licensed postmaster shall keep any carriages to be furnished at the same time with any horse or horses by him let for hire by the mile (except hearses and mourning coaches), such postmaster shall, before any such carriage shall be so furnished or used, cause all such carriages to be numbered with progressive numbers, beginning with number one, and proceeding upwards to the highest number of carriages which such postmaster shall so keep, and shall also paint, in one or more straight line or lines on the outside panel of each door of every such carriage which shall have a door thereto, and on some conspicuous part outwardly on each side of every such carriage which shall not have a door thereto, the christian name and surname of such postmaster, and the name of the city, town, or place where such carriage shall be kept, in legible characters and figures of a colour different from and opposite to the colour of the ground whereon the same shall be painted, each letter to be at least one inch in height, and each figure to be at least one inch and a half in height, and each of a proportionate breadth; and such postmaster shall continue such letters and figures on every such carriage so long as such carriage shall be kept for the purpose aforesaid, varying the numbers on such carriages from time to time as occasion shall require, so as to make the same correspond with the actual number of such carriages which he shall then keep; and if any licensed postmaster shall neglect or omit to number or paint any such carriage in manner aforesaid, or shall paint or cause to be painted thereon any false or fictitious name or place of residence, or any higher number than the greatest number of such carriages which he shall then keep, or if any licensed postmaster shall keep two or more such carriages with the same number painted thereon, or shall continue any number upon any such carriage after he shall cease to keep any number of such carriages corresponding therewith, he shall forfeit 10*l.*"

Penalty on postmaster for neglect, or for painting a false name, &c.

Commissioners or their officers to supply postmasters and toll-gate keepers with proper tickets.

Sect. 61. "That the commissioners of stamps or their officers shall supply all such licensed postmasters with proper tickets, and shall also supply all toll-gate keepers with proper exchange tickets and check tickets; and that the tickets in respect of every horse or of any number of horses let for hire by the mile shall be adapted for the insertion of the number of miles and the name of the town or place to which every such horse shall be hired to go, and if to London, the name of the street, square, or place therein; and that the tickets in respect of every horse or of any number of horses let for hire for any period of time, or in any other manner than by the mile, shall be adapted for the insertion of the names of the places from and to which every such horse shall be hired to go or to go to and return from, the day or number of days for which every such horse shall be let for hire, and if such hiring shall be for any period of time exceeding one day, then for the insertion of the name and place of residence of the person hiring such horse, and the day upon which the hiring shall commence; and all such tickets, in the several cases aforesaid, shall also be adapted for the insertion of the number of horses let for hire, the day of the month, the month and year on which every such horse shall be so let for hire, and the christian name and surname and place of residence of

the person letting the same; and the ticket hereinafter required to be given by any toll-gate keeper in exchange for any ticket delivered to him shall be adapted for the insertion of the name of the county in which the toll gate at which such exchange ticket shall be given is situated, together with the name of such toll gate, the day of the month, the month and year upon which the hiring shall be or commence, the number of horses, the day or number of days, the names of the places from and to which every such horse shall be hired to go to or go to and return from, the number of miles, and the names and residences of the persons letting and hiring every such horse, as the said particulars, or any of them shall be expressed in the original ticket."

2 & 3 Will. IV. c. 120.

Exchange tickets to be adapted for the insertion therein of certain particulars.

Sect. 62. "Every licensed postmaster who shall let any horse for hire shall, by himself or his servants previous to the using of any such horse, deliver to the person hiring such horse, or to the postillion or person to be employed to drive such horse, a ticket properly filled up with respect to all the particulars hereinbefore mentioned which shall be applicable to the hiring of every such horse; and any postmaster who shall neglect or refuse to deliver such ticket according to the directions of this act shall forfeit 10*l.*"

Postmaster shall deliver tickets with hire of horses.

Sect. 63. "No person hiring any horse shall be compelled to pay for a greater number of miles for the hire of such horse than shall be expressed upon the ticket by this act directed to be delivered as aforesaid, relating to the hiring of such horse; and any licensed postmaster who shall insert or cause or permit to be inserted in any such ticket the name of any other town or place than the town or place to which or to and from which the horse shall be hired to go or to go and return, or a less number of miles than such horse shall be actually hired to go, shall forfeit 10*l.*; and it shall be lawful for the commissioners of stamps, if they shall so think fit, after conviction of such offender, to refuse to grant to him any such licence in future."

No person shall pay hire for more miles than expressed in the ticket.

Penalty for not filling up the ticket truly.

Sect. 64. "Every person who shall receive from the person letting any horse for hire any ticket relating to the hiring of such horse shall deliver or cause to be delivered every such ticket to the toll-gate keeper at the first toll gate through which such horse shall pass or go; and every person who shall deliver to any toll-gate keeper any such ticket as aforesaid, relating to the hiring of any horse let for hire in any other manner than by the mile, shall ask for and receive from such toll-gate keeper the proper exchange ticket or check ticket containing the several particulars hereinbefore mentioned, which shall be applicable to the hiring of any such horse, and every such exchange ticket or check ticket shall, on demand of the toll-gate keeper, be produced and shown at every toll gate through which such horse shall afterwards pass or go during the journey, or within the time for which such horse shall have been let for hire."

Persons using hired horses shall deliver the tickets at first toll gate and receive check tickets.

Sect. 65. "The keeper of every toll gate through which any horse let for hire shall first pass shall demand of the person using such horse, or of the postillion or person employed to drive the same, the ticket issued for and in respect of such horse; and every such toll-gate keeper shall deliver to the person using any horse let for hire in any other manner than by the mile, or to the postillion or person employed to drive such horse, an exchange ticket or check ticket properly filled up with respect to the particulars in that behalf hereinbefore mentioned, and shall receive such original ticket, and write his name thereon, and file the same; and it shall be lawful for the keeper of any toll gate to prevent any horse let for hire from passing through any such gate, unless the proper ticket, exchange ticket, or check ticket required by this act, containing and specifying the particulars in that behalf hereinbefore mentioned, which shall be applicable to the hiring of such horse, shall be first delivered or produced and shown to such toll-gate keeper, or the person using such horse shall pay to such toll-gate keeper 1*s.* 9*d.* in respect of every such horse, which sum such toll-gate keeper is hereby authorized to demand and receive for his own use and benefit; and any toll-gate keeper who shall neglect to

Toll-gate keepers shall demand tickets, and give check tickets in exchange.

Persons not to pass gates without producing tickets, or paying 1*s.* 9*d.* for every horse.

STAMP OFFICE WEEKLY ACCOUNT.

Day of the Month.	Month and Year.	From what Place and to what Place (and back if so hired).	Number of Carriage.	Christian Name and Surname of Postillion or Driver.	The Sum charged.	By Time.			By the Mile.		Duty.
						Number of Horses.	Number of Days.	Number of Miles.	Number of Horses.	Number of Miles.	
											£ s. d.

Particulars to be inserted in stamp office weekly accounts.

Sect. 74. "Every licensed postmaster shall truly insert and set forth in such his stamp office weekly account the several particulars following; (that is to say,) the day of the month, the month and year, on which every horse let for hire by him shall be let for hire, and from and to what place, or from and to what place and back again, every such horse shall be hired to go, the number of every carriage (which by this act is required to be numbered) which shall be furnished with any such horse, the christian name and surname of every postillion or driver employed with every such horse, the amount of the sum charged for the hire or use of every such horse, where in any case allowed by this act the postmaster shall elect to pay one-fifth thereof for the duty on such letting, the time for which the same shall be let for hire or used, the number of horses so let for hire, and where the distance shall be ascertained the number of miles within which the same shall be hired to go or to go and return, or such of the several particulars aforesaid as shall be applicable to each respective letting for hire, and in all cases the amount of the duty payable for and in respect of every horse upon every such letting for hire or using: and whenever such licensed postmaster shall let any horse for hire for twenty-eight successive days or more he shall insert and set forth in such his stamp office weekly account the several particulars following; (that is to say,) the number of horses so let for hire, the day of the month, the month and year, on which such hiring shall commence, the number of every carriage by this act required to be numbered which shall be furnished therewith, the christian name and surname of every postillion or driver employed with every such horse, the time for which the same shall be hired and the name and place of abode of the person hiring the same; and such postmaster shall also insert in every such account a memorandum or no-

On letting horses for twenty-eight successive days or more.

Where horses let for twenty-eight

tice of every horse which shall have been let for hire by him for twenty-eight successive days or more, and which since the date of his last account shall have been given up and returned to him by the hirer before the expiration of the time for which such horse shall have been let for hire, and the day of the month on which the same shall have been so given up and returned, and also the amount of the duty payable in respect of the time during which every such horse shall have been under the direction of the person hiring the same by virtue of such letting for hire as aforesaid; and in case of the neglect or omission of any licensed postmaster to insert in any such stamp office weekly account the particulars hereinbefore respectively mentioned, or any of them, applicable to each respective letting for hire, he shall for every such neglect or omission forfeit 20*l.*"

2 & 3 Will. IV. c. 120.

successive days or more are returned before the expiration of the term.

Sect. 75. "Every licensed postmaster who shall let any horse for hire shall enter or cause to be entered, in such his stamp office weekly account, the several particulars by this act required to be inserted therein, on the day on which any such horse shall be so let for hire or so given up and returned as aforesaid, or on the day next immediately following, or in default thereof he shall forfeit 40*s.*"

Entries to be made on the day the horses are let or returned;

Sect. 76. "Every such stamp office weekly account of every licensed postmaster shall be open for the inspection and examination at all seasonable times of the commissioners of stamps, or any collector of the said duties, or any authorized officer of stamp duties; and any postmaster who shall refuse to permit such commissioners or collector or officer, at any seasonable time, to inspect such his stamp office weekly account, shall for every such refusal forfeit 10*l.*"

Account to be open for the inspection of proper officers;

Sect. 77. "Every licensed postmaster residing within the distance of five miles from the head office for stamps shall attend and deliver his stamp office weekly accounts, and shall pay the duties for which he shall be accountable either to the commissioners of stamps at the said head office, or to some collector of the said duties, at such place and at such time as shall be appointed for that purpose by a notice to be given upon the blank forms of the stamp office weekly accounts, which shall from time to time be delivered to such postmaster for the purpose of making therein the entries required by this act, provided such place be not at a greater distance than two miles from the said head office; and every licensed postmaster not residing within five miles of the said head office shall attend and deliver his stamp office weekly accounts, and shall pay the duties for which he shall be accountable to the collector of the said duties authorized to receive the same at such place in the market town in which such postmaster shall reside, or (in case he shall not reside in a market town) in the market town nearest to his place of residence, and at such time as shall be appointed for that purpose by a notice to be given in manner aforesaid, under the penalty of 20*l.* for every default in not attending to deliver or in not delivering any such account at the time and in manner aforesaid, and double the amount of the duties due and payable by such postmaster, so far as the same can be ascertained; and in default of the delivery of any such account, the said duties may be computed by the tickets which such postmaster shall have issued or caused to be issued, under the provisions of this act, by calculating the rate of duty imposed by this act upon the number of horses, and for the number of miles or days, or otherwise, as the case may be, specified or expressed upon such tickets respectively, without regard to the option of such postmaster, in any case, of paying one fifth part of the sum charged for the hire of any of such horses for the duty on the letting thereof."

When and where licensed postmasters shall deliver their accounts, and pay the duty thereon.

Penalty for default.

Sect. 78. "Every licensed postmaster shall, at the respective times of delivering his account and paying the money due thereon, make and subscribe, in the presence of the collector or other officer authorized to receive such account, a declaration of the truth of the account then delivered in the form following:

Postmaster to make a declaration of the truth of his account.

"*I, A. B., do declare, that the stamp office weekly account hereunto annexed doth contain a just and true statement of the number of horses which have been*

2 & 3 Will. IV. c. 120.

let for hire by me or my servants, or on my account and behalf, from the day of to the day of , both inclusive, together with the manner in which such horses have been so let for hire as aforesaid; and also the full amount of the duty due and payable by me, or for which I am chargeable or accountable, in respect of every such horse so let for hire by me or on my account as aforesaid during the time aforesaid.'

Penalty for refusal.

And if any licensed postmaster shall refuse to make and subscribe such declaration in the manner by this act required, it shall nevertheless be lawful for the collector or other such officer as aforesaid to demand and receive the money due upon such account, and such postmaster shall forfeit 20*l.* for such refusal."

Consent of commissioners of stamps requisite to prosecute for two last-mentioned penalties.

Sect. 79. Provided always, "that it shall not be lawful for any person to inform, sue, or prosecute, either in any court of record or before any justice of the peace, or otherwise, for recovery of the said penalty of 20*l.* and double duty for any default in not attending to deliver or in not delivering any such account as aforesaid, or for recovery of the said penalty of 20*l.* for refusing to make and subscribe any such declaration as aforesaid, without having first obtained the consent in writing of two or more of the commissioners of stamps for that purpose, unless the action, suit, or prosecution for any such penalty as aforesaid shall be carried on by the solicitor of stamps in England or Scotland respectively; any thing herein contained to the contrary thereof notwithstanding."

Allowance to be made to postmasters out of the monies duly accounted for and paid.

Sect. 80. "The commissioners of stamps, or the collectors or other officers aforesaid, at the time of their settling the respective accounts of the several licensed postmasters in manner hereinbefore mentioned, shall allow to such postmasters, for their own use and benefit, and shall deduct from the amount payable by them on such their respective accounts, after the rate of three-pence in the pound out of the monies by them regularly accounted for and paid pursuant to the directions of this act."

Penalty on postmasters for wilful frauds.

Sect. 81. "Every licensed postmaster who shall wilfully conceal the letting of any horse for hire, or who shall make or render any false or fraudulent account touching or concerning the duties payable by him upon or in respect of horses let for hire, or who shall be guilty of any other fraudulent contrivance, device, or pretence whatsoever, with intent or design to defraud his majesty, or any person, of any of the duties imposed by this act for or in respect of horses let for hire, shall forfeit 50*l.*; and it shall be lawful for the commissioners of stamps, if they shall so think fit, after judgment obtained against the offender, to refuse to grant any fresh licence to any such offender in future."

Persons letting horses shall be chargeable with the duty thereon.

Sect. 82. "Every person letting any horse for hire shall be chargeable with the payment of the duty by this act imposed with respect of every such letting for hire, whether such person shall receive such duty or not, and every person who shall receive the hire for any horse shall be considered as the person to whom the duties by this act granted shall be paid, and shall be chargeable with the same as if such person were the actual proprietor of such horse, although the same may be the property of some other licensed person; and whenever it shall happen that any licensed postmaster at whose inn or residence any person shall apply to change horses cannot furnish horses to convey such person on his journey, and such person shall proceed on his journey with horses hired at and coming from any other inn or place, such licensed postmaster shall issue to any person demanding the same a fresh ticket, properly filled up, for the next stage of such journey, and shall receive the duty payable in respect thereof, and shall charge himself with such duty in the same manner as if such horses had been hired from such postmaster."

Postmaster who cannot furnish horses shall give tickets for horses furnished by others, and receive the duty thereon.

Persons not licensed letting horses for hire shall be accountable for the duties.

Sect. 83. "If any person not licensed to let horses for hire shall let any horse for hire, such person shall be chargeable with the duty by this act made payable for and in respect of every horse which shall be so let for hire in the same manner as if he had obtained such licence as aforesaid, and whether such duty shall be received from the person hiring such horse

or not; and every such person so letting any horse for hire shall, upon one week's notice in writing for that purpose to him given by any collector of the said duties for the county, district, or place where he shall so let any horse for hire, deliver to such collector a true account in writing, signed by such person, of every such horse which he shall have let for hire and shall not then have already accounted for, and of the manner in which every such horse shall have been let for hire, and of the duty payable in respect thereof, in the same manner as by this act is required to be done by licensed postmasters, and shall also verify such account by oath (to be administered by such collector), and shall thereupon pay to such collector the amount of such duty; and in case of any refusal or neglect so to do, then he shall forfeit 20*l.* for every default in not delivering such account verified as aforesaid, and double the amount of the duty which he shall be then chargeable with: Provided always, that where any such notice shall have been given as aforesaid, then upon the delivery of such account in pursuance of such notice, and upon payment of all duty due thereon, and upon taking out such licence as ought to have been taken out previously thereto, the person so delivering such account shall be discharged from any penalty which he may be then liable to in consequence of having let for hire any horse mentioned in such account without having obtained such licence as aforesaid."

2 & 3 Will. IV. c. 120.

Account to be delivered on a week's notice from the collector verified on oath.

Penalty for neglect.

Indemnity on accounting for the duties and taking out a licence.

Sect. 84. "Every person in any city, town, or place, who shall let for hire or use any horse for drawing any carriage to be used as a hackney carriage to any distance not exceeding five miles from the general post office of any such city, town, or place, shall be subject and liable to the payment of the sums following, in lieu of and as a composition for the duties by this act chargeable upon horses let for hire; (that is to say,) the sum of 5*s.* per week for or in respect of all or any horses let for hire, or used for drawing every such carriage when drawn by two horses; and the sum of 3*s.* per week for or in respect of any horse or horses let for hire, or used for drawing any such carriage when drawn by one horse; and such person shall not be required, in respect of such horses so let for hire or used as last aforesaid, to keep the weekly accounts hereby directed to be kept or to deliver the tickets hereby directed to be delivered by persons letting horses for hire: Provided always, that if any horse used for drawing any such carriage shall go a greater distance than five miles from any such general post office as aforesaid, the person letting for hire or using any such horse shall be subject to all the rules and regulations of this act in respect of horses let for hire, and shall be chargeable with the duties by this act imposed in respect of horses let for hire: Provided also, that the person letting for hire or using any horse for drawing any such carriage as aforesaid, shall take out a licence expressly authorizing him so to do, and shall cause every such carriage to be numbered, and shall cause his christian name and surname, and the name of the city, town, or place, to be painted and inscribed upon the outside panel of each door, or upon some conspicuous part of such carriage, in like manner as by this act is before directed in respect of carriages kept to be furnished or used with horses let for hire, and under and subject to the like penalties as are by this act imposed upon persons neglecting to take out licences, or neglecting to number or cause to be numbered any carriage kept to be furnished or used as aforesaid, or neglecting to paint or cause to be painted thereon the name of the person letting for hire or using any such horse with such carriage, and the name of the city, town, or place, where such carriage shall be kept; and every person letting or using any horse for hire, for drawing such carriage used as a hackney carriage as aforesaid, shall attend and pay the said weekly duties at such times and places as persons licensed to let horses for hire are required by this act to do, and shall be subject to the like penalty for any neglect or default in attending and paying such duties as aforesaid: Provided also, that nothing herein contained shall extend to exempt from the payment of the general duties by this act imposed in respect of horses let for hire any person letting

Composition to be paid for horses used in carriages standing for hire as hackney carriages in country towns, and not going more than five miles from the general post office there.

Persons using horses in drawing such carriages to take out a licence for that purpose, and to paint their names, &c., on their carriages.

Horses so used not to be exempt from the general duties imposed

2 & 3 Will. IV. c. 120.

by this act, unless the carriages are regularly used for plying.

Not to extend to hackney carriages in London.

horses for hire to draw any such carriage, unless such carriage shall be regularly and constantly used for the purpose of plying for hire in the public streets of some city or town as a hackney carriage; and that in all informations, actions, suits, or other proceedings whatsoever respecting the payment of any duty, or the recovery of any penalty, in respect of any horse used in drawing any such carriage, the proof of such carriage being regularly and constantly used for the purpose aforesaid shall be upon the person letting such horse for hire: and provided also, that nothing herein contained relating to the payment of such composition as aforesaid shall extend to any horse or horses used for drawing any hackney carriage at any place within the distance of five miles from the general post office in the City of London." (As to hackney coaches, *see* "*Hackney Coaches*," Vol. III.)

Duties on horses let for hire not exceeding 50*l.* recoverable by distress, on complaint made before a justice.

Sect. 85. "If any person liable under the provisions of this act to account for and pay any duty, not exceeding in amount the sum of 50*l.*, for or in respect of horses let for hire, shall refuse or neglect to account for and pay such duty according to the directions of this act, it shall be lawful for any justice of the peace having jurisdiction where such horses shall have been let for hire, and such justice is hereby required, on complaint made to him, to summon the party complained of, and any witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose; and either on the appearance of the party complained of, or in default thereof, it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and on due proof being made of the sum due and owing for such duty as aforesaid by the voluntary confession of the party, or by the oath of one or more witness or witnesses, to grant a warrant to any constable or other peace officer, or to any collector of the said duties, or any other officer of stamp duties, directing him to distrain every such person by his goods and chattels, and also to seize and take the carriages, horses, harness, and other things by this act made subject and liable to such duty for the amount thereof, and of all the costs, charges, and expenses of obtaining such warrant, and of the proceedings incident or relating thereto; and it shall be lawful for such constable or other peace officer, or collector or officer of stamp duties, and he is hereby required, to make such distress and seizure accordingly, and the distress so to be taken to detain and keep for the space of five days, at the costs and charges of the person distrained upon; and if the amount of such duty, and of all the costs, charges, and expenses aforesaid, shall not be paid within such space of five days, then such constable or other peace officer, or collector or officer of stamp duties, shall cause the goods and chattels, carriages, horses, harness, and other things so seized or taken, to be sold in the manner directed by this act, and shall render the overplus (if any) of the money arising by the sale thereof, after deducting and retaining the amount of such duty, and all the costs, charges, and expenses aforesaid, as well as the charges and expenses of the sale, to the person so distrained upon, or to the owner of the carriages, horses, harness, or other things so seized and taken as aforesaid; and for the purpose of taking such distress it shall be lawful for such constable or other peace officer, and for such collector or officer of stamp duties, in the presence of any constable or other peace officer, where any refusal or resistance shall be made, to break open, in the day-time, any house, building, or place where any such carriages, horses, harness, or other articles and things, or any goods or chattels to be seized or taken under such warrant as aforesaid, shall be; and if no distress can be had or taken whereon to levy such duty, costs, charges, and expenses, or in case an insufficient distress only can be found and shall be taken, then it shall be lawful for the justice by whom such warrant shall be granted to commit the person by or from whom such duty, costs, charges, and expenses, or any part thereof, shall remain due or owing, to the common gaol or house of correction, there to remain until all such

For want of sufficient distress, the defaulter to be committed to gaol.

duty, and all costs, charges, and expenses, or so much thereof as shall remain, after deducting therefrom the proceeds of the sale of any insufficient distress which may have been taken and sold, shall be fully paid and satisfied." 2 & 3 Will. IV. c. 120.

Sect. 86. "From and after the passing of this act it shall be lawful for the lords commissioners of his majesty's treasury, at any time and from time to time, as it shall be thought expedient, either by themselves or by the commissioners of stamps by them authorized for that purpose, to let to farm the several duties by this act granted in respect of horses let for hire to any persons, who shall be willing to farm the said duties or any part thereof in separate divisions or districts, according to the regulations and in the manner hereinafter mentioned: Provided always, that it shall not be lawful to let to farm the said duties or any part thereof, at any one time, for any longer period or term than three years from the day on which any such letting to farm shall commence and take effect." Duties on horses let for hire may be let to farm.

Sect 87. "A notice of one calendar month at least shall be given by the said lords commissioners of the treasury or by the commissioners of stamps, in the *London Gazette*, of the time and place of letting to farm the said duties or any part thereof, specifying the divisions or districts the duties within which it is intended to let to farm, and also the place or office at which proposals for taking to farm such duties, or any part thereof, shall be delivered." Notice of letting to be inserted in the Gazette.

Sect. 88. "No such proposals shall be proceeded upon unless the same be signed by and in the proper names of the parties proposing to become bidders, and specifying the places of their abode, nor unless such proposals shall have been delivered as aforesaid at least three days previous to the day mentioned in the *London Gazette* for letting to farm the duties to which such proposals shall relate." Proposals to be delivered three days previous to letting.

Sect. 89. "The biddings for such duties shall be conducted under such regulations as shall be established for that purpose by the lords commissioners of the treasury, or by the commissioners of stamps duly authorized as aforesaid, and that the person who shall be the highest bidder shall be the farmer or renter of the said duties, or such part thereof as shall be then put up to farm, for such term, not exceeding three years as aforesaid, as may be determined on, and as shall be inserted in the *London Gazette*; and such person shall execute a contract, to be prepared in pursuance of this act, containing such covenants, provisoes, and conditions as the said lords commissioners, or the commissioners of stamps authorized as aforesaid, shall deem necessary or expedient for securing the payment of the money or yearly rent contracted for, as well as for securing and compelling a due compliance with the terms and regulations of this act; and such person shall also give security by bond to his majesty, with three or more sufficient sureties, to the satisfaction of the said lords commissioners or of the commissioners of stamps, for securing the performance of the several covenants, clauses, and agreements contained in such contract, and also for securing the payment of the said money or yearly rent so contracted for to the receiver-general of stamp duties, at the head office for stamps in Westminster, in equal portions, by eight several payments in the year, on the days to be fixed and appointed, before any such letting to farm as aforesaid." Mode of proceeding in putting up the duties. Highest bidder to execute a contract to farm the duties, and give security for performance thereof.

Sect. 90. "It shall be lawful for the said lords commissioners of the treasury, or the said commissioners of stamps authorized as aforesaid, to appoint the time for making a deposit of a sum of money, and the amount thereof, on account of the rent to be paid by the person who shall be declared the farmer of any of the said duties hereby allowed to be farmed; and in case any such person shall fail to make such deposit at the time appointed, or shall fail to execute a proper contract in writing, and to give satisfactory security for the payment of the rent, and the due performance of such contract, in the manner directed by this act, within the time to be appointed for that purpose, it shall be lawful for the said lords commissioners, or the commissioners of stamps authorized as aforesaid, to declare Deposit to be made by persons farming duties.

2 & 3 Will. IV. c. 120.

the bidding and contract of such person to be null and void, and the deposit thereon made (if any) to be forfeited."

If duties be not let at time fixed, or if contract for farming same be vacated, they may be put up again, or be let by private contract.

Sect. 91. "In case any of the said duties to arise in any district shall not be let to farm at the time mentioned in such advertisement for want of a sufficient bidding for such duties, or in case the bidding or contract of any person who shall have been declared the best bidder for or the farmer of any of the said duties shall be declared or shall become null and void, it shall be lawful for the said lords commissioners, or the commissioners of stamps authorized as aforesaid, from time to time, whenever any such event shall happen, to appoint such future day as they shall judge most proper for letting to farm the said duties to arise in such district in the manner and upon the like notice as hereinbefore directed, or to receive proposals for farming such duties, and to let the same to farm by private contract, for any such period of time as aforesaid: Provided always, that no contract for letting to farm the said duties shall be made with any licensed postmaster, nor with any person for the use or on behalf of any licensed postmaster, nor so as that any licensed postmaster shall have any interest in or any benefit from any such contract, and any such contract made contrary to this act shall be utterly null and void; and if any contract made in pursuance of this act shall be assigned to any licensed postmaster, or to any other person for the use of any licensed postmaster, or so that he shall have any interest therein or any benefit therefrom, such assignment shall also be utterly null and void."

Duties not to be farmed by any persons licensed to let horses.

Duties shall belong to district where tickets are issued.

Sect. 92. "And in order to prevent disputes concerning the said duties when let to farm in cases where the same may be collected in one district or division and the tickets may be delivered in another district or division, be it enacted, That in such case the duties shall belong and the tickets issued thereupon shall be delivered and accounted for to the person who shall be the farmer of the duties arising within the district or division within which the inn, house, or other place shall be situate at which the postmaster shall be licensed; and every toll-gate keeper at whose gate or bar such ticket shall be delivered shall deliver the same to the farmer of the said duties, arising within such district or division as aforesaid, at such time and in such manner as such tickets are by this act directed to be delivered to the several collectors of the said duties when the same are not let to farm."

Farmers of duties not disqualified.

Sect. 93. "No person contracting to farm the said duties or any part thereof, or appointed a collector thereof, shall, by reason of such contract or appointment, be disqualified to vote at the election of any member to serve in parliament, any law or usage to the contrary thereof notwithstanding."

Commissioners of stamps may depute farmers and other persons on their behalf to be collectors of said duties.

Sect. 94. "It shall be lawful for the commissioners of stamps, from time to time as occasion shall require, to depute and appoint as well the persons who shall become farmers or lessees of the said duties, and their executors, administrators, and assigns, as any other persons approved by the said commissioners, upon the nomination and for the use of such farmers or lessees, or their executors, administrators, or assigns, to be collectors of the duties so farmed arising within the respective districts, with full power to grant the necessary licences to persons within the respective districts for letting horses for hire, and to receive the stamp office weekly accounts relating to the said duties by this act directed to be delivered by licensed postmasters within their respective districts, and to receive the money due thereon, and generally to execute and perform all other the powers, matters, and things touching the collecting, the managing, and enforcing the payment of the said duties within their respective districts, which by this act are authorized to be done by any collector of the said duties; and no deputation or commission appointing any person to be a collector of the said duties on horses let for hire shall be charged or chargeable with any higher stamp duty than 1*l.* 15*s.*: Provided always, that it shall be lawful for the said commissioners to revoke the deputation or appointment and authority of any person deputed or appointed a collector of the said

duties upon any such nomination as aforesaid whenever the said commissioners shall think fit so to do." 2 & 3 Will. IV. c. 120.

Sect. 95. "It shall be lawful for such farmers or persons so farming the said duties or any part thereof, with the consent of the commissioners of stamps, to vary the form of keeping the weekly account directed by this act to be kept by the several licensed postmasters within their respective districts in such manner as such farmers shall judge most convenient for keeping such accounts, and also to add the name or number of their respective districts on the face or back of the tickets to be delivered by them to the several licensed persons in their respective districts."

Farmers may vary the form of keeping the weekly account, and add the names of their districts on tickets.

Sect. 96. "All the powers, provisions, regulations, matters, and things given, prescribed, or appointed by this act with relation to the duties on horses let for hire, or to the persons appointed or to be appointed to collect the same, may be put in force and carried into execution by any person farming the said duties, or any part thereof, in like manner as any collector of the said duties is authorized and empowered by this act to put in force and execute the same; and every person farming the said duties or any part thereof shall be entitled to the same privileges, and to have and use the like remedies for collecting and recovering the duties by this act imposed, as if the duties were sued for by or on the behalf of his majesty, and as if such duties had not been let to farm."

Powers of collectors under this act may be exercised by the farmers of duties.

Sect. 97. "It shall not be necessary, upon the trial or hearing of any information, action, suit, or other proceeding to be commenced for the recovery of any of the said duties on horses let for hire which shall be let to farm in pursuance of this act, or for the recovery of any penalty imposed by this act with relation to the said duties, to produce the instrument whereby the commissioners of stamps shall be authorized to let to farm the said duties or any of them, nor to prove the execution of any contract or agreement whereby any of the said duties shall be let to farm, nor to prove the execution of any assignment of any such contract or agreement, nor to prove the signatures of the said commissioners of stamps to any consent to prosecute for any such penalty as aforesaid: Provided always, that such contract, agreement, or assignment, and consent to prosecute, shall be produced on the trial or hearing of any such information, action, suit, or proceeding, and it shall be made to appear that the person claiming or acting under such contract, agreement, or assignment had in fact acted as the farmer of the duties therein mentioned or some of them; and in every such case such proof shall be deemed and taken by the court or justice before whom any such trial or hearing shall be had to be good and legal evidence of such person being the farmer of the duties mentioned in such contract, agreement, assignment, or other instrument, unless by other evidence the contrary shall be made to appear; any law or usage to the contrary notwithstanding."

Proof that persons are farmers of duties.

Sect. 98. "If any officer of stamp duties, or other person employed in the execution of this act, in relation to the said duties on horses let for hire, shall wilfully refuse or neglect to do or perform any matter or thing by this act required or directed to be done or performed by such officer or person, whereby any of his majesty's subjects shall sustain any damage, such officer or person shall be liable, in an action to be founded on this statute, to answer to the party aggrieved for all such damages, with full costs of suit."

Officers neglecting their duty to be liable to actions.

Sect. 99. "It shall be lawful for any inspector of stamp duties, or any collector of the duties by this act granted in respect of horses let for hire, or for any other person authorized by the commissioners of stamps, on producing and showing (if required so to do) his appointment or authority in writing from time to time, to enter into any toll house or other place at which any toll is or shall be by law payable or any ticket shall be receivable under this act, and in such toll house or other place to remain so long as such inspector, collector, or other person so authorized shall think fit and requisite, for the purpose of examining and checking the stage carriages travelling upon any turnpike or other road, or for the purpose of receiving and examining the tickets relating to horses let for hire;

Inspectors and collectors may enter toll houses, to check stage carriages, and horses let for hire, and to receive tickets, &c.

2 & 3 Will. IV. c. 120.

Penalty for refusing to permit them to enter, or obstructing them in discharge of duty.

and if any toll-gate keeper, toll collector, or other person shall refuse to permit any such inspector, collector, or other person authorized as aforesaid to enter into or to remain in any toll house or other such place as aforesaid, or shall obstruct or hinder or molest such inspector, collector, or other person authorized as aforesaid in entering into or remaining in such toll house or place for the purposes aforesaid, or if any toll-gate keeper, toll collector, or other person shall in any way hinder, molest, or disturb, or use abusive or insulting language to any such inspector, collector, or other person authorized as aforesaid, either in the discharge of his duty or in the reasonable use of such toll house or other place as aforesaid, every person so offending shall forfeit 20*l.*"

Penalty on conniving at offences.

Sect. 100. "If any person shall receive any sum of money, or any other consideration or reward of any kind whatsoever, for aiding or assisting in or for conniving at the commission of any offence against this act, he shall forfeit 20*l.*"

Duties recoverable as other stamp duties.

Sect. 101. "All duties granted or imposed by or incurred under this act may be sued for and recovered by all such ways and means and in such manner and form as are and is or at any time hereafter shall be provided by law for the recovery of any other duties granted or imposed by or incurred under any other act relating to stamp duties, as well as by the particular ways and means provided by this act; and in all actions, bills, plaints, informations, and proceedings to be commenced, prosecuted, entered, or filed in the name of his majesty or of any other person for the recovery of any such duties, or of any debts or penalties which may be incurred or become payable under this act, it shall be lawful for his majesty, or any other person legally entitled to sue or prosecute for the same, to have and recover such duties, debts, and penalties, with full costs of suit and all other reasonable charges and expenses."

Duties and penalties recoverable with costs.

In what courts pecuniary penalties may be sued for.

Sect. 102. "All pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for in any of his majesty's courts of record at Westminster for any offence committed in England, Wales, or Berwick-upon-Tweed, and in his majesty's Court of Exchequer in Scotland, for any offence committed in that part of Great Britain called Scotland, by action of debt, bill, plaint, or information, wherein no essoin, protection, or privilege, nor more than one imparlance, shall be allowed: Provided always, that it shall not be lawful for any person to sue or prosecute for any such penalty in any of the courts aforesaid without having first obtained the consent in writing of two or more of the commissioners of stamps for that purpose, unless the action, suit, or prosecution for such penalty shall be carried on by the solicitor of stamps in England or Scotland respectively; and it shall be lawful for the said commissioners, if they shall think fit, to order the proceedings to be stayed in any such action, suit, or prosecution on payment of part only of any penalty incurred, with or without costs, or on payment only of the costs incurred or any part thereof, or otherwise, as they shall judge proper and expedient."

Consent of commissioners of stamps requisite to sue for penalties.

Penalties not exceeding 20*l.* recoverable before a justice.

Sect. 103. Provided always, "that it shall be lawful for any justice of the peace having jurisdiction where the offence shall be committed, to hear and determine any offence against this act which may subject the offender to any pecuniary penalty not exceeding 20*l.*; and it shall be lawful for any such justice and he is hereby required, upon information given or complaint made before him, to summon the party accused, and also the witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose; and either on the appearance of the party accused, or in default thereof, it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party or by oath of one or more witness or witnesses, to give judgment for the penalty, and to award and issue out his warrant for the levying of any penalty so adjudged, together with the costs and

Mode of proceeding.

expenses of such proceedings, and also the costs and expenses of such warrant, and of levying the same on the goods of the offender, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods of such offender cannot be found sufficient to answer the penalty and all such costs and expenses it shall be lawful for such justice and he is hereby required to commit such offender to the common gaol or house of correction, there to remain for such term or period of time as is by this act fixed or provided as the term of imprisonment for the particular offence of which such offender shall have been convicted; and in any case where no such term of imprisonment is or shall be so fixed or provided as aforesaid, then such justice is hereby required to commit such offender to the common gaol or house of correction, there to remain for any time not less than three calendar months and not exceeding six calendar months if the full penalty imposed by this act for the offence of which such offender shall have been convicted shall amount to the sum of 20*l.*, and for any time not less than one calendar month and not exceeding three calendar months if such penalty shall not amount to 20*l.*, unless such penalty and all such costs and expenses shall be sooner paid and satisfied; and if the person convicted shall find himself aggrieved by the judgment of any such justice it shall be lawful for such person to appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions; and such justices at such sessions are hereby authorized to examine witnesses upon oath, and finally to hear and determine such appeal; and in case the judgment of any such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet: Provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid unless, within five days next after such conviction made, he shall enter into a recognizance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal: Provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocation, or reduction, or by any other writ or process, into any superior or other court or jurisdiction; any law or usage to the contrary notwithstanding."

Appeal.

Proceedings not to be quashed for want of form, nor removed.

Sect. 104. Provided always, "that it shall not be lawful for any person other than the solicitor of stamps, or some other officer of his majesty's stamp duties in England or Scotland respectively, to inform or prosecute before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the cases next hereinafter mentioned; (that is to say,) any penalty imposed or incurred with relation to horses let for hire or the duties thereon, and any penalty incurred by the driver of any stage carriage by reason of the carrying of a greater number of passengers in, upon, or about such stage carriage than is or shall be allowed by this act or by the licence relating to such stage carriage, and any penalty imposed or incurred by reason of the carrying of any outside passenger, or any luggage on the roof or top of any stage carriage, contrary in any manner to the directions of this act, or by reason of any person sitting or being carried on any luggage, or upon that part of the roof of any stage carriage allotted for luggage, or by reason of more than one person besides the driver sitting or being carried upon the box of any stage carriage, or of refusing to permit or allow any stage carriage or lug-

By whom penalties shall be recovered before a justice.

2 & 3 Will. IV. c. 120.

gage to be measured, or the passengers to be counted, or refusing or neglecting to stop such carriage at any toll gate for that purpose, or by reason of any other offence which may be subject to any penalty the driver or conductor or guard of any stage carriage, or any person employed to hold the horses, or having the care of or being employed in or about any stage carriage, or any toll-gate keeper, toll collector, constable, or peace officer, or by reason of any person summoned as a witness neglecting or refusing to attend or give evidence; and if any person, other than such solicitor or officer as aforesaid, shall commence or prosecute any information or complaint before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the several cases hereinbefore mentioned and allowed in that behalf, such information or complaint and every proceeding thereupon had shall be null and void to all intents and purposes: Provided always, that nothing herein contained shall extend to permit or allow any person other than the solicitor, or some other officer of stamp duties, to inform or prosecute for the recovery of any penalty imposed by or incurred under this act by reason of the driver of any carriage or other person plying for passengers to be conveyed for hire by any carriage not having the proper numbered plates fixed thereon, unless the offender shall be apprehended and taken before a justice of the peace, as authorized by this act."

Justices may mitigate penalties.

Sect. 105. "It shall be lawful for any justice of the peace, before whom any person shall be convicted of any offence against any of the provisions of this act, to mitigate as he shall see fit any penalty by this act imposed in cases where such justice shall see cause so to do, provided that all reasonable costs and charges expended or incurred in prosecuting for such offence shall be always allowed over and above the sum to which such penalty shall be mitigated, and so as such mitigation do not reduce the penalty to less than one fourth of the penalty incurred, exclusive of such costs and charges; any thing herein contained to the contrary notwithstanding."

Application of penalties.

Sect. 106. "All pecuniary penalties imposed by or incurred under this act, which shall be sued or prosecuted for and recovered by or in the name of any person other than his majesty's attorney general in England, or his majesty's advocate for Scotland, or the solicitor of stamps, or any other officer of stamp duties in England or Scotland respectively, shall respectively be distributed and divided in manner following; (that is to say,) one moiety thereof to his majesty, and the other moiety thereof, with full costs of suit, to the person who shall inform and sue or prosecute for the same within fourteen days after the offence shall have been committed; and all such pecuniary penalties as aforesaid which shall be sued or prosecuted for and recovered by or in the name of his majesty's said attorney general in England or advocate in Scotland, or by or in the name of such solicitor or officer as aforesaid, or for the recovery of which any information or complaint shall be made, or any action or suit shall be commenced after the expiration of the time aforesaid, shall go and be applied to the use of his majesty: Provided always, that it shall be lawful for the commissioners of stamps, at their discretion, to give all or any part of such penalties or shares of penalties belonging to his majesty as rewards to any person or persons who shall have detected such offences or given information which may have led to the discovery thereof, or to the conviction of the offenders."

Justices shall receive the crown's share of penalties, and pay same to clerk of peace, to be remitted to Stamp Office.

Sect. 107. "Every justice of the peace before whom any person shall be convicted of any offence against this act shall take and receive the penalty or share of the penalty belonging to his majesty levied or paid under or by virtue of such conviction, and every such justice shall pay or cause to be paid all such sums of money which he shall so take or receive as aforesaid, at the next general or quarter sessions of the peace after he shall have so taken or received the same, into the hands of the clerk of the peace or other such officer of the county or place within which such conviction shall have been made, who shall, within ten days after his re-

ceipt thereof, and without fee or reward, pay or remit the same for the use of his majesty to the solicitor of stamps, at the stamp office in Westminster or Edinburgh, as the conviction shall happen to be in England or Scotland respectively, any thing in any other act contained to the contrary notwithstanding; and every such justice shall, within one week after every such payment made by him to any clerk of the peace or other such officer, transmit to such solicitor as aforesaid a schedule containing the name of the person so convicted, the nature of the offence, and the amount of the penalty of and in which he shall have been convicted, the date of such conviction, and the sum of money which shall have been paid under or by virtue thereof, together with the name of the clerk of the peace or other officer to whom he shall have paid the same; and if any such justice shall neglect or omit to pay or cause to be paid to such clerk of the peace or other officer as aforesaid, at the time and in the manner hereinbefore directed, any such penalty or share of penalty received by such justice as aforesaid, or upon payment thereof shall neglect or omit to transmit to the proper solicitor of stamps such schedule as aforesaid, or if any such clerk of the peace or other officer shall neglect or omit to pay or remit any such penalty or share of penalty to such solicitor of stamps as aforesaid, within the time and in manner hereinbefore limited and directed in that behalf, every person so offending shall forfeit 50*l.*"

2 & 3 Wm. IV. c. 120.

Penalty on justice or clerk of peace for neglecting to pay over the penalties received.

Sect. 108. "If any proprietor of any stage carriage, or the driver or guard of any stage carriage, shall be summoned before any justice of the peace to answer any information or complaint exhibited or made against him by any person other than an officer of stamp duties, touching or concerning any offence committed or alleged to have been committed by such proprietor, driver, or guard respectively against the provisions of this act, and such information, or complaint shall afterwards be withdrawn or quashed or dismissed, or if the defendant shall be acquitted of the offence charged against him, it shall be lawful for such justice to order and award that the informer or person exhibiting or making such information or complaint shall pay to the defendant such costs of making or preparing for his defence, and also such compensation for his loss of time and for the time of his witnesses (if any) in attending such justice touching or concerning such information or complaint, as to such justice shall seem reasonable; and in default of immediate payment of the sum so awarded it shall be lawful for such justice to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if goods and chattels of such person sufficient to answer the sum so awarded, with such costs as aforesaid, cannot be found, it shall be lawful for such justice to commit such person to the common gaol or house of correction for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied."

Justices empowered to award costs to defendants where informations or complaints are withdrawn or dismissed in certain cases.

Sect. 109. "Any summons issued by any justice of the peace requiring any defendant or any witness or other person to appear before such justice, or any other justice, with reference to any information, complaint, or other proceeding for the recovery of any duty or penalty under this act, shall be deemed to be well and sufficiently served in case either the summons or a copy thereof be served personally upon any such person as aforesaid, or be left at his usual or last place of residence, or, in case such person be a proprietor, driver, conductor, or guard of any stage carriage, be left with the book-keeper or person for the time being acting as book-keeper for such stage carriage in any town or place from, into, or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed; and any notice by this act required to be given to the proprietor of any stage carriage or to any other person shall be deemed to be well and sufficiently served in case either such notice, or a copy thereof, be served personally upon such proprietor or other person, or be left at his usual or last place of residence,

Service of summonses and other notices.

2 & 3 Will. IV. c. 120.

or (in the case of such proprietor) be left with any book-keeper or person acting as book-keeper at any office belonging to such proprietor."

Penalty on constables refusing to serve a summons, warrant, &c.

Sect. 110. "If any constable or other peace officer shall refuse or neglect to serve or execute any summons, warrant, or order granted, issued, or made by any justice of the peace, or by any two of the commissioners of stamps, pursuant to any of the provisions of this act, every such constable or peace officer so offending shall forfeit 10*l.*"

Penalty on witnesses neglecting to attend.

Sect. 111. "If any person who shall be summoned as a witness to give evidence before any justice of the peace or before any justice at sessions touching the matters alleged in or relating to any information, complaint, appeal, or other proceeding depending before such justice or justices for the recovery of any duty or penalty incurred under this act, shall neglect or refuse to appear before such justice or justices at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justice or justices, or if any person so summoned shall appear, but shall refuse to be examined and give evidence before such justice or justices touching the matters aforesaid, every such person so offending shall forfeit 10*l.*"

Officers of stamp duties not disqualified from being witnesses.

Sect. 112. "Upon the trial or hearing of any information or complaint exhibited or made under any of the provisions of this act any officer of stamp duties, or other person employed by the commissioners of stamps, shall be deemed and is hereby declared to be a competent witness, notwithstanding that such officer or person may be the informant or complainant, or may be entitled to or expect any part of any pecuniary penalty or any remuneration or reward, on the conviction of any offender upon any such information or complaint."

Proceedings to be drawn up according to forms in schedule (B.)

Sect. 113. "Every complaint, information, summons, conviction, warrant of distress, or commitment, or other such proceeding which shall be had or taken for the recovery of any duty or penalty under the provisions of this act, may be drawn or made out according to the several forms contained in schedule (B.) hereunto annexed, or to the effect thereof, *mutatis mutandis*, as the case shall require: and every such complaint, information, summons, conviction, warrant, or other such proceeding which shall be so drawn or made out shall be good and effectual, to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner than is required in and by such forms respectively."

Carriages, horses, harness, &c. chargeable with the duties and penalties incurred.

Sect. 114. "All the carriages, horses, and harness, and other articles and things, kept, used, or employed by any person, whether licensed under the authority of this act or not, for the purpose of conveying passengers for hire, or for the purpose of being let for hire as aforesaid shall be subject and liable to and chargeable with the duties in arrear and owing, or which shall become due and payable from time to time, from or by such person for or in respect of any stage carriage kept, used, or employed by such person, or for or in respect of any horse let for hire by any such person, and to and with all penalties which may be imposed upon or incurred by such person under this act, and also to and with the costs and expenses of all proceedings which shall or may be had or taken for the recovery of such duties and penalties respectively; and all such carriages, horses, harness, and other articles and things shall, for the purpose of satisfying such duties, penalties, costs, and expenses, or any part thereof respectively, be deemed to be the goods and chattels of such person, and shall be distrained or otherwise seized or taken accordingly, in or into whose custody or possession soever the same shall or may be or come, and by or under what right or title soever the same shall or may be held or claimed; and in case any person in or into whose custody or possession any such carriages, horses, harness, or other articles shall be or come, by or under any means or title whatsoever, shall convert the same to his own use, or shall sell or dispose thereof for the use or benefit of any other person, after notice given by the commissioners of stamps or their solicitor, or by any person authorized to collect or receive the duties

Persons selling or disposing of such carriages, &c. after notice, to be liable to extent of value thereof.

by this act granted, or any of them, that such carriages, horses, harness, and other articles are subject and liable to or chargeable with any of the duties, penalties, costs, and expenses aforesaid, every person so converting or selling or disposing of such carriages, horses, harness, or other articles shall be accountable to his majesty, to the extent of the value of such carriages, horses, harness, or other articles, for the amount of the duties, penalties, costs, and expenses to or with which such carriages, horses, harness, and other articles shall be subject, liable, or chargeable, and the same may be sued for and recovered under and by virtue of this act as a debt due to his majesty accordingly." 2 & 3 Will. IV. c. 120.

Sect. 115. "In all cases where any goods or chattels distrained or otherwise seized or taken under any of the provisions of this act are directed to be sold, the same shall be sold by public auction, and notice of the time and place of such sale shall be given to the owner of such goods or chattels, or left at his last known place of abode, three days at least prior to such sale: Provided always, that if the owner of any such goods or chattels shall give his consent in writing to the sale thereof at an earlier period than is by this act or shall be by any such notice appointed for such sale, or in any other manner than is by this act directed, it shall be lawful to sell such goods or chattels according to such consent: Provided also, that if the owner of such goods or chattels shall at any time before the sale thereof pay or tender to the person who by any warrant or other process shall be directed or authorized to cause such goods or chattels to be sold the sum which he shall by such warrant or process be directed to levy or raise by the sale of such goods or chattels, together with all reasonable costs and expenses incurred, no sale of such goods or chattels shall be made." In what manner goods distrained under this act shall be sold.

Sect. 116. "All actions and prosecutions which shall be brought or commenced against any person for any thing done in pursuance or under the authority of this act shall be commenced and prosecuted within three calendar months next after the fact committed, and not afterwards, and shall be brought and tried in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in such action may plead the general issue, and give this act and any other matter or thing in evidence at any trial to be had thereupon; and if the cause of action shall appear to arise from any matter or thing done in pursuance and by the authority of this act, or if any such action shall be brought after the expiration of such three calendar months, or shall be brought in any other county or place than as aforesaid, or if notice of such action shall not have been given in manner aforesaid, or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into court after such action commenced by or on behalf of the defendant, the jury shall find a verdict for the defendant; and if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or shall discontinue any such action, or if on demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant may have for costs of suit in other cases at law; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be had shall at the time of such trial certify in writing his approbation of the action and of the verdict obtained thereupon." Limitations of actions. Venue. Notice of action. General issue. Tender of amends.

Sect. 117. "And in order to avoid the frequent use of divers terms and expressions in this act, and to prevent any misconstruction of the terms and expressions used therein, be it enacted, That wherever in this act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as Construction of the terms used in this act.

2 & 3 Will. IV. c. 120.

one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and that wherever the terms and expressions following occur in this act they shall be construed respectively in the manner hereinafter directed; (that is to say,) that the term and expression 'his majesty' shall be construed to mean and include his majesty, his heirs and successors; that the term 'officer of stamp duties' shall be construed to mean any officer deputed or appointed by the commissioners of stamps, whatever may be his particular office or employment; that the term 'proprietor,' used with reference to any stage carriage, shall be construed to mean and include any and every person who shall keep, use, or employ such stage carriage, or who shall be concerned in the keeping, using, or employing thereof; that the term 'licensed postmaster' shall be construed to mean and include any and every person, male or female, licensed to let horses for hire under the authority of this act; that the term 'horse' or 'horses' shall respectively be construed to mean and include any mare or gelding, or mares or geldings, as well as any horse or horses; that the term 'toll gate' shall be construed to mean any gate or bar at which any toll is payable or any ticket is receivable for any horse or carriage; that the term 'toll-gate keeper' shall be construed to mean and include the keeper of any such gate or bar as aforesaid, or the collector of tolls thereat, or any person acting as such keeper or collector respectively; that the term 'driver' used with reference to any stage carriage shall be construed to mean the coachman, driver, or director thereof; and that the term 'luggage' shall be construed to mean any trunk, box, bale, parcel, package, corn, or other article, whether such trunk, box, bale, parcel, package, corn, or other article shall or shall not belong to any passenger conveyed by any such stage carriage."

"His Majesty."

"Officer of Stamp Duties."

"Proprietor."

"Licensed Postmaster."

"Horse," or "Horses."

"Toll-gate."

"Toll-gate Keeper."

"Driver."

"Luggage."

Powers and provisions of other stamp acts in force to extend to this act.

Sect. 118. "All the powers, provisions, regulations, forfeitures, pains and penalties contained in or imposed by any other act or acts in force with relation to any of the duties under the management of the commissioners of stamps, so far as the same are or may be applicable in cases not by this act expressly provided for, and so far as the same shall not be superseded by and as the same shall be consistent with the express provisions of this act, shall be of full force and effect with respect to the duties by this act granted and to the matters and things charged or chargeable therewith, and shall be applied and put in execution for securing and collecting the said last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually, to all intents and purposes, as if such powers, provisions, regulations, forfeitures, pains and penalties had been repeated and specially enacted in this act with reference to the duties by this act granted and made payable."

Commencement of act.

Sect. 119. "Where the several clauses and provisions of this act are not expressly directed to take effect from and after the passing thereof, such clauses and provisions, so far as they in any manner relate to stage carriages, or to the duties hereby granted in respect thereof, or of licences to keep the same, or in respect of passengers conveyed for hire, shall commence and take effect on the 11th day of October, in this present year 1832; and such clauses and provisions, so far as they in any manner relate to the duties hereby granted in respect of horses let for hire or of licences to let the same, shall commence and take effect on the 1st day of February in the year 1833."

3 & 4 Will. IV. c. 48.

By the 3 & 4 Will. IV. c. 48, intituled "An Act to amend an Act of the Second and Third Years of His present Majesty, relating to Stage Carriages in Great Britain; and also to explain and amend an Act of the First and Second Years of His present Majesty, relating to Hackney Carriages used in the Metropolis," [28th August, 1833,] reciting the passing of the 2 & 3 Will. IV. c. 120, "and it is expedient to alter and amend the said act in the several particulars hereinafter mentioned;" it is

So much of 2 & 3 Will. IV. c. 120, as relates to the

enacted. "That from and after the passing of this act, so much and such part and parts of the said recited act as in any manner regulate or restrict the number of passengers allowed to be carried on the outside of any stage carriage, or regulate or relate to the distribution or placing of or the manner of carrying the outside passengers on any stage carriage, and also so much and such part of the said recited act as requires that a separate division or space shall be allotted for luggage on the top or roof of any stage carriage, shall be and the same is and are hereby repealed: Provided always, that nothing herein contained shall extend or be construed to extend to repeal or alter any clause of the said recited act by which any penalty is imposed for conveying a greater number of passengers on the outside of any licensed stage carriage than is specified and allowed in and by the licence granted in respect of such carriage."

3 & 4 Will. IV. c. 48.

number or distribution of outside passengers, or as requires a separate division for luggage on the roof of a stage carriage, repealed.

Sect 2 provides for the number of outside passengers allowed to be carried by stage carriages, but this and sect. 3 are virtually repealed by the 5 & 6 Vict. c. 79, s. 17, &c. *post*, 1129.

Sect. 4. "No person shall be allowed to sit or be carried upon any luggage (*see* sect. 117, *ante*, 1121), placed on the roof of any stage carriage, and that not more than one passenger or other person shall be allowed to sit or be carried upon the box with the driver of any stage carriage; and that if any person shall sit or be carried upon any luggage placed as aforesaid, or if more than one person besides the driver shall sit or be carried upon the box of any stage carriage, the driver of such stage carriage at the time when any such offence shall be committed shall forfeit 5*l*."

No person to sit on luggage on the roof, nor more than one person besides the driver on the box.

Sect. 5. "All penalties which may be incurred under the provisions of this act may be prosecuted for and recovered by information or complaint before a justice of the peace in the name of any person who will inform or complain in that behalf, by the same ways and means and in the same manner and form as are and is provided for the recovery of any penalty incurred under the said recited act; and all clauses, regulations, and provisions contained in the said recited act, relating to the recovering, levying, or mitigating of the penalties thereby imposed, shall be of full force and effect, and shall be applied and put in execution for the recovering, levying, and mitigating of the penalties by this act imposed, as fully and effectually to all intents and purposes as if such clauses, regulations, and provisions had been repeated and specially enacted in this act with reference to the penalties by this act imposed."

Mode of recovering penalties.

Sect. 6. Provided always, "that all pecuniary penalties imposed by or incurred under this act and under the said recited act, or either of them, whether the same shall be sued or prosecuted for and recovered by or in the name of his majesty's attorney general in England, or his majesty's advocate for Scotland, or the solicitor of stamps, or any other officer of stamp duties in England or Scotland respectively, or for the recovery of which any information or complaint shall be made or any action or suit commenced by any other person or persons whomsoever, shall go and be applied to the use of his majesty, any thing in the said recited act to the contrary thereof notwithstanding; and all such penalties shall be paid or remitted to the solicitor of stamps in the manner directed by the said act, and shall be deemed to be part of his majesty's revenue arising from stamp duties, and shall accordingly be accounted for and paid by the said solicitor to the receiver general of stamp duties. Provided always, that it shall be lawful for the commissioners of stamps, at their discretion, to give all or any part of any such penalties as rewards to any person or persons who shall have detected the offences for or in respect of which such penalties shall have been incurred, or who shall have given information which may have led to the discovery thereof or to the conviction of the offenders." (*See* further clauses, *title* "*Hackney Coaches*," Vol. III.).

Application of penalties.

The 6 & 7 Will. IV., c. 45, transfers the collection and management of the duties in Great Britain on horses let for hire, and on licences relating

Transfer of collection and management of duties on horses let for hire from the commissioners of stamps and taxes to the commissioners of excise.

2 & 3 Vict. c. 66.

to the same, from the commissioners of stamps and taxes to the commissioners of excise.

Penalty for marking upon stage carriages any inscription differing from the licence as to the number of passengers authorized to be carried thereby.

By 2 & 3 Vict. c. 66, s. 2, reciting "whereas by the said recited act it is required that there shall be painted in manner therein mentioned upon every stage carriage the greatest number of passengers allowed to be carried in or by such carriage, and also, when such carriage shall be licensed to carry both inside and outside passengers, the greatest number of passengers allowed to be taken in the inside and on the outside thereof respectively: and whereas upon some stage carriages there are painted several inscriptions differing from each other as to the number of passengers which such stage carriage is licensed to carry, and one or more of them differing in that respect from the licence granted for such stage carriage, whereby the object and intention of the said last recited enactment are defeated, and it is expedient to provide a remedy for the same;" be it therefore enacted, "That if any stage carriage shall be used having any inscription written, painted, or marked thereon importing or signifying, or intended to import or signify, that such carriage is licensed or authorized to carry or convey thereby, either in the whole or in the inside or on or about the outside thereof, any number of passengers other than the actual number which such carriage is by the licence relating to the numbered plate or plates which shall be fixed or placed upon such carriage expressly authorized to carry either in the whole or in the inside or on or about the outside thereof respectively, the proprietor of such carriage shall forfeit for every such offence the sum of 5*l.* to be recovered and applied in like manner as any penalty incurred under the said recited act may be recovered and applied." (*See* the 2 & 3 Will. IV. c. 120, s. 36, *ante*, 1099.)

5 & 6 Vict. c. 79.

Stat. 5 & 6 Vict. c. 79, entitled "An Act to repeal the Duties payable on Stage Carriages and on Passengers conveyed upon Railways, and certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof; and also to amend the Laws relating to the Stamp Duties," [5th August, 1842,] reciting that "by the 2 & 3 Vict. c. 66, certain duties contained in the schedule to the said act annexed were granted and imposed, and are now payable for and in respect of every mile which a stage carriage shall be licensed to travel;" and that "by the 2 & 3 Will. IV. c. 120, certain duties contained in the schedule (A.) to the last-mentioned act annexed were granted for and in respect of every licence for keeping, using, and employing any stage carriage, and for and in respect of all passengers conveyed for hire along any railway in Great Britain in or upon carriages drawn or impelled by the power of steam or otherwise;" and that by the 55 Geo. III. c. 184, "certain stamp duties were granted and imposed, amongst others, upon bills of lading and charter-parties in Great Britain, and upon instruments of collation, donation, presentation, and institution of and to any ecclesiastical benefice, dignity, or promotion in England, and upon certain licences hereinafter mentioned; and it is expedient that all the said duties should be repealed, and others granted in lieu thereof;" enacts, "That from and after the commencement of this act the aforesaid duties granted and imposed by the said act passed in the second and third years of her majesty's reign, for and in respect of every mile which any stage carriage shall be licensed to travel, and the aforesaid duties granted and imposed by the said act passed in the second and third years of the reign of his late majesty king William the Fourth, for and in respect of every licence for keeping, using, or employing any stage carriage, and for and in respect of passengers conveyed for hire along any railway in Great Britain, and the duties hereinafter mentioned, granted and imposed by the said act passed in the fifty-fifth year of the reign of king George the Third, (that is to say,) the duty of 3*s.* upon any bill of lading of or for any goods, merchandize, or effects to be exported or carried coastwise, and the several duties of 1*l.* 15*s.* and 1*l.* 5*s.* upon any charter-party, or any agreement or contract for the charter of any ship or vessel, or any memorandum,

Duties repealed:

On Stage carriages;

Railway passengers;

Bills of lading;

Charter-party;

letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel, and the several and respective duties of 20*l* and 10*l*. upon any collation, donation, or presentation of or to any ecclesiastical benefice, dignity, or promotion in England, and the several and respective duties of 2*l*., 30*l*., and 15*l*. upon any institution in and to any ecclesiastical benefice, dignity, or promotion in England, and the duty of 2*l*. upon any licence which shall pass the seal of any archbishop, bishop, chancellor, or other ordinary, or of any ecclesiastical court in England, so far as relates to any licence to hold a perpetual curacy in England, not proceeding upon a nomination, shall severally cease and determine, and the same shall be and are hereby repealed, save and except such of the said respective duties, or so much and such part or parts thereof respectively as shall have become due or payable or have been incurred before or upon the day appointed for the commencement of this act with regard to such duties respectively, all which said duties or parts of duties so due or incurred, or remaining to be paid as aforesaid, shall be recoverable by the same ways and means, and with and under the same penalties, and in the same manner, in all respects, as if this act had not been made."

5 & 6 Vict. c. 79.

Collations, presentations, &c. to benefices.

Sect. 2. "That in lieu of the duties by this act repealed there shall be raised, levied, collected, and paid, unto and for the use of her majesty, her heirs and successors, in and throughout Great Britain, for and in respect of every licence for keeping, using, or employing any stage carriage in Great Britain, and for and in respect of every stage carriage, and for and in respect of the passengers conveyed upon any railway, and also for and in respect of the several instruments, matters, and things mentioned and described in the schedule to this act annexed, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, and things, or any of them, shall be written or printed, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the same schedule; and that the said schedule shall be deemed and taken to be a part of this act; and that all the said duties shall be under the care and management of the commissioners of stamps and taxes for the time being, and shall be denominated and deemed to be stamp duties."

New duties to be levied, as set forth in schedule (*a*).

To be under commissioners of stamps and taxes.

Sect. 3. "And be it enacted, That the commissioners of stamps and taxes shall be and are hereby empowered and required to provide proper and sufficient stamps or dies for expressing and denoting the several duties hereby granted upon the vellum, parchment, or paper chargeable therewith, and to alter and renew the said stamps or dies from time to time as occasion shall require: Provided always, that it shall be lawful for the said commissioners to use any of the stamps or dies heretofore provided to denote any former stamp duties for the purpose of expressing and denoting any of the duties hereby granted, and to use two or more stamps or dies, for denoting any one duty, as occasion may require: Provided also, that it shall be lawful for the said commissioners, at any time within twelve calendar months next after the passing of this act, to cancel and allow, in the same manner as in the cases of stamps spoiled or rendered unfit for the purpose intended, all stamps for any of the instruments, matters, and things mentioned in the said schedule, which by the operation of this act shall have been rendered useless or unfit for the purpose for which the same were originally designed, and to deliver out in lieu thereof other stamps of the same value, or otherwise, at their discretion, to cause any additional stamp or stamps to be impressed on the vellum, parchment, or paper having thereon the stamp or stamps so hereby rendered useless or unfit, on payment of the duty to be denoted by such additional stamp or stamps."

Commissioners to provide dies, &c.

Commissioners may use old dies to denote new duties.

Stamps rendered useless by act to be allowed.

Sects. 4, 5, 6 and 7, relate to railways and the duties payable for the conveyance of passengers by them.

(*a*) As to when duties attach, &c., *see Re Day*, 1 M'Clel. 384.

5 & 6 Vict. c. 79.

Commencement of stage carriage licences.

Sect. 8. "And whereas it is expedient to alter and amend the said act passed in the second and third years of the reign of his late majesty king William the Fourth in certain respects relating to licences for stage carriages; be it therefore enacted, That from and after the commencement of this act every licence for keeping, using, or employing any stage carriage (except an original licence granted between the first Monday in October and the first day of November in any year) shall be dated on the day on which the same shall be granted, and shall commence and have effect upon the same day, or any subsequent day, to be specified in such licence as the day of the commencement thereof; provided that no supplementary licence shall be granted in lieu of any licence which shall have been previously granted before the time appointed for the commencement of such last-mentioned licence." (*See* 2 & 3 Will. IV. c. 120, s. 13, *ante*, 1091.)

Supplementary licences may be granted to use same carriage on a different line of road

Sect. 9. "And be it enacted, That whenever any person to whom any licence in force to keep, use, or employ a stage carriage shall have been granted shall be desirous of using or employing the said stage carriage upon any line of road other than that specified in such licence, the commissioners of stamps and taxes, or their proper officer, upon application to them or him, as in other cases of supplementary licences is required in pursuance of the said act passed in the second and third years of the reign of his late majesty king William the Fourth, shall grant to such person a supplementary licence with such alteration or variation, as aforesaid, as well as with any other alteration or variation, if required, as permitted by the last-mentioned act, upon payment of the duty hereby granted upon any supplementary licence; (*see* 2 & 3 Will. IV. c. 120, s. 16, *ante*, 1092;) and also whenever any person to whom a licence to keep, use, or employ a stage carriage shall have been granted, shall die during the existence of such licence in force, and shall leave a widow or a child of full age, and also whenever any woman to whom any such licence shall have been granted shall marry during the existence of such licence in force, and in any of such cases respectively such surviving widow, or the said child, or the husband of such woman shall continue and carry on the business of such deceased person or of such woman respectively, it shall be lawful for the said commissioners, or their proper officer, if they or he shall think fit, upon the application of any such widow or child or husband, as the case may be, and on his or her signing a requisition for that purpose, in such form as the said commissioners shall approve, and in the case of such deceased person, with the consent of his or her executor or administrator, to grant to such widow, child, or husband respectively a supplementary licence in lieu of such pre-existing licence so granted to such deceased person or such woman respectively, in the same manner and for the same purposes as any such supplementary licence might have been or may be granted to such deceased person or such woman under the said act or this act in case he or she had not died or married respectively, upon payment of the duty by this act granted thereon; (*see* 2 & 3 Will. IV. c. 120, s. 29, *ante*, 1096;) and every such supplementary licence in any of the cases aforesaid, and the person to whom the same shall be granted, shall be under and subject to the same regulations and liabilities, and such person shall be entitled to the same advantages, as if this provision had been inserted and contained in the said act of the second and third years of the reign of the said king William the Fourth, and such supplementary licence had been granted under the authority thereof. Provided that nothing herein contained shall extend or be construed to extend to authorize the granting of any such licence, whether original or supplementary, to any person who shall not have attained the full age of twenty-one years."

Widow or child may continue to use licences granted to deceased parties.

Licences not to be granted to minors.

Certified copies of licences to be evidence.

Sect. 10. "And whereas by the said recited act of the second and third years of the reign of king William the Fourth it is enacted, that a copy of every licence to keep, use, or employ a stage carriage, and of every indorsement made thereon, shall be kept at the office or place from which such licence shall be issued, in order that every person may have a copy thereof, paying 1s. for the same; and it is expedient that such copies, certified as hereinafter mentioned, should be received as evi-

dence of the granting and of the contents of such licences respectively, and of the indorsements thereon; be it therefore enacted, That the commissioners of stamps and taxes, or the officer by whom any such licence shall have been granted, or other officer of stamp duties authorized by the said commissioners in that behalf, shall, upon application made to them or him for that purpose, deliver to the person requiring the same a copy of any such licence, certified according to this act, on payment of the sum of 1*s.*; and in all proceedings and upon all occasions whatsoever a copy of any such licence, and of every indorsement thereon (if any), the same being made and taken from the copy thereof filed or kept at such office or place as aforesaid, certified to be a true copy under the hand of one of the said commissioners, or of the officer by whom such licence shall have been granted, or other officer authorized as aforesaid, upon proof made that such certificate hath been signed with the handwriting of a person described in or by such certificate as such commissioner or officer, and whom it shall not be necessary to prove to be a commissioner, shall be received as evidence, against any and every person appearing by such copy to be named in such licence, that the same was duly granted by such person, and of the contents thereof, and of every indorsement thereon; and in any such case the said commissioners, or any of their officers, shall not be required or compellable to produce in any court, or at any place out of the office of the said commissioners or officers respectively, the original of any such licence or indorsement, or any copy thereof filed or kept in any such office, or any entry or memorandum relating to such licence in the books of the said commissioners or officers, or to give any other evidence or proof of the granting or contents of any such licence or indorsement than such copy certified as aforesaid." 5 & 6 Vict. c. 79.

Sect. 11. "And whereas by the said last-mentioned act it is enacted, that if any carriage be found upon or near to any public highway, and any person shall ply for passengers to be conveyed by such carriage for hire at separate fares, such carriage not having placed and fixed thereupon the numbered plates required by the said act to be fixed on stage carriages, the driver of such carriage, or the person having the care thereof, or plying for passengers to be conveyed thereby, such driver or person not being the owner of such carriage, shall forfeit 10*l.*, and if he be such owner, he shall forfeit 20*l.*; and moreover, that it shall be lawful for any constable or other peace officer, and any officer of stamp duties, without any warrant for that purpose, to apprehend such driver or other person, and to carry and convey him before any justice of the peace, to be dealt with as therein mentioned, and also to drive or take such carriage, with the horse or horses harnessed thereto or drawing the same, or to cause the same to be driven or taken to some public green-yard or some livery stables, or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and such carriage, horse or horses, and harness, are thereby made liable to the payment of such penalty, and of such costs and expences, or of such expences only, as the case may be, as are therein mentioned (*ante*); and it is expedient to amend the said provision by extending the same to the cases hereinafter mentioned; be it therefore enacted, That if any stage carriage, whether licensed or not, shall be used upon any public highway for the purpose of carrying or conveying any passengers, one or more of whom shall be charged or shall pay separate or distinct fares or a separate and distinct fare, or at the rate of separate or distinct fares for their respective places or seats, or his place or seat therein, or conveyance thereby, such carriage not having placed and fixed thereupon the numbered plates required by the said last-mentioned act to be fixed on stage carriages, the driver, and also the conductor or guard thereof, or other person having the direction, management, or care thereof, or assisting therein, shall forfeit the sum of 10*l.*, or if he be the owner, the sum of 20*l.*; and moreover it shall be lawful for any officer of stamp duties, without any warrant for that purpose, with or without the aid and assistance of any constable

Recital of 2 & 3 Will. IV. c. 120, s. 30, relating to stage carriages plying for hire without plates.

Recited enactment amended.

5 & 6 Vict. c. 79.

or peace officer or other person, at any place where the journey for the performance of which such carriage shall be used shall terminate, or on the return of such carriage to the place from whence such journey commenced, to apprehend such driver, and such conductor, guard or other person, and to carry and convey him before any justice of the peace having jurisdiction where the offence shall be committed, to be dealt with as hereinafter and as in the said last-mentioned act is mentioned; and it shall also be lawful for such officer of stamp duties, with or without such aid and assistance as aforesaid, to seize and take such carriage, with the horse or horses harnessed thereto, or drawing or having drawn the same, and to drive or take the same, or to cause the same to be driven or taken, to some public green-yard or some livery stables, or other place of safety, and there to lodge the same for safe custody until the determination of such justice shall be known; and such justice shall proceed therein as in the said last-mentioned act is provided in relation to the offences before described; and every such penalty respectively, and also such costs and expences as in the said last-mentioned act are mentioned respectively, shall be levied and recovered by the same ways and means, and, if necessary, the offender committed for the same term or time as in the said last-mentioned act are in that behalf provided in relation to the aforesaid penalties thereby imposed: Provided always, that nothing in this act contained shall in any way affect or alter, or be deemed to affect or alter, the provision contained in the said last-mentioned act, so far as the same relates to the offence hereinbefore described."

2 & 3 Will. IV. c. 120, s. 46, excepting mail coaches from the regulations as to plates, repealed.

Sect. 12. "And whereas it is expedient that all mail coaches licensed to carry passengers for hire should have fixed thereon the usual numbered plates, in like manner as other stage carriages; be it therefore enacted, That so much of the said last-mentioned act as enacts that none of the regulations therein contained relating to the plates to be fixed upon any stage carriage shall extend to any mail coach employed in the service of the general post office, built or constructed according to the regulations of the postmaster general, and not carrying more than four outside passengers, shall be and the same is hereby repealed."

No stage carriage to carry a greater number of passengers than it is constructed to carry.

Sect. 13. "And whereas the repealing of the duties in respect of the passengers to be conveyed by stage carriages in Great Britain, and granting a uniform rate or duty on stage carriages in lieu thereof, will render certain regulations necessary for preventing the overloading of such carriages, and the dangers and inconveniences consequent thereon; be it therefore enacted, That no stage carriage shall be allowed to carry at one time a greater number of passengers in the whole, or in the inside or on the outside thereof than the same is constructed to carry according to the regulations of this act; and that no such carriage shall be deemed to be constructed to carry a greater number of passengers than the same will contain at one time, upon fit and proper seats provided therein or thereupon for that purpose, allowing for every passenger, on an average, upon each and every separate seat, a space convenient for sitting thereon of sixteen inches, measuring in a straight line lengthwise on the front of each seat: Provided always, that no child under five years of age, sitting in the lap, shall be deemed a passenger within the meaning of this act."

What number of passengers a carriage shall be deemed to be constructed to carry.

Number of passengers which a carriage is constructed to carry to be painted thereon.

Sect. 14. "That no stage carriage shall be used or employed unless nor until there shall be truly painted, in words at length, and in legible and conspicuous roman letters, one inch at the least in height, and of a proper and proportionate breadth, and in a colour different from and opposite to the colour of the ground on which such letters shall be painted, and in one or more straight horizontal line or lines, upon some conspicuous part on the outside of such carriage, at the back thereof, and also in the inside thereof, and where the same shall be constructed to carry passengers in different compartments, then in each such compartment, and so that the same shall be at all times plainly and distinctly visible and legible, the number of passengers which such carriage is constructed to carry according to this act in the whole, and on the outside and in the inside thereof

respectively, and in each such compartment; and if any stage carriage shall be used or employed without having all and every such particulars painted thereon in manner aforesaid, or if any stage carriage shall be used or employed having thereon or in or on any part thereof any words or figures, or any particulars whatever, specifying or importing, or tending or intended to signify or import, that the same is constructed or in any way authorized to carry a greater number of passengers in the whole, or on the outside or in the inside thereof respectively, or in any compartment thereof, than the same is truly constructed to carry according to the regulations of this act, the proprietor thereof shall forfeit the sum of 10*l.*"

5 & 6 Vict. c. 79.

Penalty for using stage carriage without having proper particulars painted thereon.

Sect. 15. "That if the number of passengers at any one time conveyed in, upon, or about any stage carriage shall be greater in the whole, or upon or about the outside thereof, or in the inside thereof, or in any compartment thereof respectively, than the same is constructed to carry, according to the regulations of this act, or than any particulars painted thereon shall specify in the whole, or upon the outside thereof, or in the inside thereof, or in any compartment thereof respectively, the driver and conductor or guard thereof for the time being respectively shall forfeit the sum of 5*l.*"

Penalty for carrying greater number of passengers than carriage is constructed to carry or than particulars specify.

Sect. 16. "That it shall be lawful for any constable or peace officer at any time, and also for any person travelling or having immediately before travelled by any stage carriage, in any case where he shall have reason for believing or suspecting that a greater number of passengers are carried or are about to be carried, or have immediately before, or at any time during the journey last performed, been carried, by such stage carriage, to measure the seats or any of the seats in or upon such carriage, in order to ascertain the length thereof respectively, or the number of passengers which the said carriage is constructed to carry; and if any person shall refuse to permit the seats in or upon any such stage carriage to be measured, or shall by any means or in any way prevent or attempt to prevent any constable, peace officer, or other such person as aforesaid from or hinder or obstruct him in measuring the same, the person so offending shall forfeit for every such offence the sum of 5*l.*"

Constable or passenger may measure the seats.

Penalty for refusing to permit the measuring of the seats.

Sect. 17. "That no stage carriage the top or roof of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel, shall be allowed to carry in any case more than the number of outside passengers hereinafter respectively mentioned; (that is to say,) not more than five outside passengers where such carriage shall be constructed to carry, according to the regulations of this act, not exceeding nine passengers in the whole; not more than eight outside passengers where such carriage shall be constructed to carry, according to the said regulations, in the whole exceeding nine and not exceeding twelve passengers; not more than eleven outside passengers where such carriage shall be constructed to carry according to the said regulations, in the whole exceeding twelve and not exceeding fifteen passengers; not more than twelve outside passengers where any such carriage shall be constructed to carry, according to the said regulations, in the whole exceeding fifteen and not exceeding eighteen passengers; and not more than two additional outside passengers for every three additional passengers which any such carriage shall be constructed to carry, according to the said regulations, in the whole; and if any greater number of outside passengers shall be carried by any such stage carriage as aforesaid than is hereinbefore specified and allowed, the driver (*a*) of such stage

Number of passengers allowed to be carried on the outside of stage carriages.

(*a*) In the case of *R.* v. *Barker*, 3 *East*, 504, it was held on the 28 Geo. III. c. 57, that one might be convicted as the driver of a stage coach, for permitting and suffering beyond the proper number of persons to go upon the roof of it, although he be not stated to be a driver employed by the owner, and although he did not appear when summoned before the magistrate, in which case the second section of the act directs that the owner shall be liable to the penalty thereby laid on such driver.

5 & 6 Vict. c. 79.

carriage, and the conductor or guard thereof, at the time when such offence shall be committed, shall respectively forfeit the sum of 5*l*."

Not to alter the regulations of 2 & 3 Will. IV. c. 120.

Sect. 18. "That nothing in this act contained shall in any way alter or affect any of the regulations or provisions contained in the said act passed in the second and third years of the reign of his late majesty king William the Fourth, relating to stage carriages, now in force, which shall not be inconsistent with the regulations and provisions herein contained; and that all the clauses and provisions contained in the said act relating to the recovery of penalties before any justice of the peace shall be applied and be put in force for the recovery of any penalty imposed by or incurred under this act: Provided always, that it shall be lawful for any person to inform and prosecute for any penalty incurred as well by the owner or proprietor of any stage carriage, as by the driver, conductor, or guard thereof, under this act, so far as relates to the particulars to be painted on stage carriages, or to carrying a greater number of passengers by any stage carriage than the same is constructed to carry, or than is allowed by this act, provided the information be exhibited or the complaint made within ten days after the offence shall have been committed: Provided also, that where by this act any penalty is imposed upon the driver and conductor or guard of any stage carriage respectively for one and the same offence, only one prosecution shall be had or maintained for the recovery of such penalty against such driver or conductor or guard, at the option of the person prosecuting for the same."

Recovery of penalties for offences relating to stage carriages.

Evidence in prosecutions relating to the carrying of passengers by stage carriages

Sect. 19. "That in any prosecution for the recovery of any penalty relating to the carrying of passengers by any stage carriage, or to the number of passengers which any stage carriage shall be constructed to carry, if proof be made of the due admeasurement of the height or bearing of such stage carriage, or of the seat or any of the seats in or upon any such carriage, or of the particulars painted thereon, the same shall be deemed and received as evidence thereof without the production of such carriage."

Sects. 20, 21, 22 and 23, relate to fire insurances, bills of lading, charter-parties, admissions to inns of court, probate duty, and other matters than stage coaches.

Penalties how to be recovered.

Sect. 24. "That all pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for and recovered by the same ways and means, and in the same manner and form, and be mitigated and applied as any other penalty incurred under any act relating to the stamp duties may be sued for, prosecuted, and recovered, mitigated and applied; and that all the powers, provisions, regulations, forfeitures, pains, and penalties contained in or imposed by any act or acts in force with relation to any of the duties under the management of the commissioners of stamps and taxes, so far as the same are or may be applicable in cases not by this act expressly provided for, and so far as the same shall not be superseded by, and as the same shall be consistent with, the express provisions of this act, shall be of full force and effect with respect to the duties by this act granted, and to the matters and things charged or chargeable therewith, in respect of which duty is hereby granted, and shall be applied and put in execution for recovering, securing, and collecting the said duties hereby granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations, forfeitures, pains, and penalties had been repeated and specially enacted in this act with reference to the duties by this act granted and made payable."

Powers, provisions, &c. of former acts to continue in force.

Construction of terms used in this act.

Sect. 25. "That wherever in this act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things, as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction."

Sect. 26. "That this act shall commence and take effect on the respective days hereinafter mentioned; (that is to say), so much thereof as relates to the duties on passengers conveyed on Railways shall commence and take effect on the 1st day of August in this present year 1842; and so much thereof as relates to stage carriages, and licences for keeping, using, or employing the same, and to the duties thereon, shall commence and take effect on the 3rd day of October in this present year 1842; and so much as relates to any other duties, matters, and things shall commence and take effect on the passing of this act." 5 & 6 Vict. c. 79. Commencement of act.

SCHEDULE to 5 & 6 Vict. c. 79, of the DUTIES granted on STAGE CARRIAGES; (that is to say,)

	DUTY. £	s.	d.
For and in respect of every original licence to be taken out yearly by the person who shall keep, use, or employ any stage carriage in Great Britain; (that is to say,) for every such stage carriage	3	3	0
And for and in respect of every supplementary licence for the same carriage, for which any such original licence shall have been granted, which shall be taken out in any case allowed by law during the period for which such original licence was granted	0	5	0
And for and in respect of every mile which any stage carriage shall be licensed to travel	0	0	1½

SCHEDULES to the 2 & 3 WILL. IV. c. 120, as to Post Horse Duties.

SCHEDULE (A.)

The DUTIES on HORSES let for Hire, and on LICENCES to let the same; (that is to say,)

	DUTY. £	s.	d.
For and in respect of every licence to be taken out yearly by every person who shall let any horse for hire in Great Britain .	0	7	6
And for and in respect of every horse let for hire by the mile at the usual rate charged for horses travelling post at the place at which such horse shall be let for hire; (that is to say,) for every mile such horse shall be hired, or used to travel or go .	0	0	1½
And for and in respect of every horse let for hire to go no greater distance than eight miles from the place of letting .	One fifth part of the sum charged for such letting, or in lieu thereof, at the option of the person letting the horse.		
	0	1	9
And for and in respect of every horse let for hire to go no greater distance than eight miles from the place of letting, where such horse shall not bring back any person, and shall not deviate from the usual line of road between the place of letting and the place to which such horse shall be hired to travel or go .	0	1	0

2 & 3 Will. IV. c. 120.

	DUTY.		
And for and in respect of every horse let for hire, or used for any period of time less than twenty-eight successive days, or in any other manner than as aforesaid	One fifth part of the sum charged or received, or agreed to be received, on every such letting for hire or using.		
And also for and in respect of every horse let for hire for twenty-eight successive days, or for any longer period of time, where any such horse shall be returned in a less period of time than twenty-eight successive days, and shall not be exchanged for another horse in continuation of the same hiring			
Or in lieu of such last-mentioned one-fifth part of such sum (at the option of the person letting the horse), the following duties for every day such horse shall be let for hire or used, or shall (by virtue of any such letting) have been under the direction of the person to whom the same shall be hired; (that is to say,)	£	s.	d.
For every day not exceeding three days	0	2	6
And for every day exceeding three days, and not exceeding thirteen days	0	1	9
And for every day exceeding thirteen days, and less than twenty-eight days	0	1	3

SCHEDULE (B.)

The Forms of Proceedings for the Recovery of Duties and Penalties under the 2 & 3 Will. IV. c. 120.

(1.) Form of a warrant of distress for the recovery of stage carriage duties.

To A. B., of, &c.

Whereas a licence [or, *licences*] *hath* [or, *have*] *been granted, under the provisions of the statute in that behalf made, to C. D., of, &c. to keep, use, and employ a stage carriage* [or, *stage carriages*] *with plates numbered respectively* [here specify the number or numbers of the plates appertaining to the licence or licences granted to C. D.]: *and whereas the said C. D. hath made default in payment of the sum of , for the duty which hath become due and payable to his majesty in respect of such licence* [or, *licences*] *between the day of , and the day of , contrary to the statute in that case made and provided: therefore we , and , esquires, two of the commissioners of stamps, do hereby authorize and direct you to distrain the said C. D., by his goods and chattels, and also to seize and take all or any of the carriages, horses, harness, and other things made subject and liable to the said duty by the statute in that behalf, and to levy thereon the said sum of , being the amount of such duty so due and payable as aforesaid; and if within the space of five days next after taking such distress the said sum of , together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then we do hereby order and direct that you shall sell and dispose of the said goods and chattels, carriages, horses, harness, and other things which shall be so distrained, seized and taken, and that you shall levy and raise thereout the said sum of , and all reasonable costs and charges of taking, keeping, and selling such distress, rendering the overplus (if any) to the owner of the said goods and chattels: and you are to certify to the commissioners of stamps what you shall have done by virtue of this our warrant. Given under our hands and seals this day of .*

(2.) Form of complaint whereon to found a warrant of distress for recovery of duties on horses let for hire.

County [or, as the case may be.] *of to wit.* } *Be it remembered, that on this day of , in the year of our Lord , at , in the of , A. B., an officer of stamp duties,* [or, *a collector or farmer of the duties on horses let for hire,* as the case may be,] *complaineth to me, C. D., esq., one of his majesty's justices of the peace for the said , that E. O., of, &c. , being liable, under the provisions of the statute in that behalf made, to account for and pay certain duty granted to his majesty by the said statute for and in respect of divers horses let for hire by the said E. O., in the said of , hath neglected to account for and pay to the*

proper collector or officer appointed to receive such duty, according to the directions of the said statute, the sum of , due and owing from the said E. O. to his said majesty [or, *to the said A. B.*, or, *to G. H., his majesty's farmer of the said duties*, if the case be so,] *for such duty as aforesaid; and thereupon the said A. B. prayeth of me, the said justice, that the said E. O. may be summoned to appear and show cause, if any he have, why, upon due proof being made of the sum due and owing from him for such duty as aforesaid, a warrant of distress should not be granted for recovery thereof, pursuant to the directions of the said statute.* 2 & 3 Will. IV. c. 120.

Taken and received by me the day and year first above written.

(3.) Form of a summons on the foregoing complaint.

To E. O., of, &c.

County [or, as the case may be,] *of to wit.* *Whereas complaint hath been made unto me, C. D., esq., one of his majesty's justices of the peace for the , of , that you being liable, under the provisions of the statute in that behalf made, to account for and pay certain duty granted to his majesty by the said statute for and in respect of divers horses let for hire by you in the said , have neglected to account for and pay to the proper collector or officer appointed to receive such duty, according to the directions of the said statute, the sum of , due and owing from you to his said majesty* [or, *to A. B., his majesty's farmer of the said duties*] *for such duty as aforesaid: these are therefore to summon you to be and appear at , in the said , on the day of , at the hour of , in the noon of the same day, before me the said justice, or before such other of his majesty's justices of the peace for the said , as shall be then present, in order that you may show cause, if any you have, why, on due proof being made of the sum of money due and owing from you for such duty as aforesaid, a warrant of distress should not be granted for the recovery thereof, pursuant to the directions of the said statute; and if you fail to appear accordingly such proceedings will be taken as if you had appeared and had not shown any sufficient cause why such warrant should not be granted.*

Given under my hand and seal, this day of

(4.) Form of a warrant of distress founded on the foregoing complaint.

To the Constable of , [or, to C. D., of, &c., as the case may be.]

County [or, as the case may be,] *of to wit.* *Whereas complaint hath been made that E. O., of, &c., , being liable, under the provisions of the statute in that behalf made, to account for and pay certain duty granted to his majesty by the said statute for and in respect of divers horses let for hire by the said E. O., in the said of , hath neglected to account for and pay to the proper collector or officer appointed to receive such duty, according to the directions of the said statute, the sum of , due and owing from the said E. O., to his said majesty* [or, *to A. B., his majesty's farmer of the said duties*] *for such duty as aforesaid: and whereas the said E. O. hath been duly summoned, and due proof hath been made on oath before me that the sum of is due and owing from the said E. O. for such duty as aforesaid, and that he hath neglected to pay the same: therefore I command you to distrain the said E. O. by his goods and chattels, and also to seize and take all or any of the carriages, horses, harness, and other things made subject and liable to the said duty by the statute in that behalf, and to levy thereon the said last-mentioned sum, being the amount of such duty due as aforesaid, and also the further sum of , for the costs, charges, and expenses of proceeding for and obtaining this warrant, and of the proceedings incident and relating thereto, making together the sum of , and if within the space of five days next after the taking of such distress the said sum of , together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I do hereby order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, seized, and taken, and that you shall levy and raise thereout the said sum of , and all reasonable costs and charges of taking, keeping, and selling such distress, rendering the overplus (if any) to the*

2 & 3 Will. IV. c. 120.

owner of the said goods and chattels, and you are to certify to me what you shall have done by virtue of this my warrant.

Given under my hand and seal this day of

(Signed)

One of his majesty's justices of the peace for the said of

(5.) Form of a warrant of commitment for want of sufficient distress, founded on the foregoing complaint.

To the Constable of , in the of , and also to the keeper of the common gaol [or, *house of correction*] *at , in the said .*

County [or, as the case may be,] *of to wit.* } *Whereas complaint was made that E. O., of, &c. , being liable, under the provisions of the statute in that behalf made, to account for and pay certain duty granted to his majesty by the said statute for and in respect of divers horses let for hire by the said E. O. in the said of , had refused and neglected to account for and pay to the proper collector or officer appointed to receive such duty, according to the directions of the said statute, the sum of , due and owing from the said E. O., to his said majesty,* [or, *to A. B., his majesty's farmer of the said duties,*] *for such duty as aforesaid, and whereas the said E. O. was duly summoned, and due proof was made on oath that the sum of was due and owing from the said E. O. for such duty as aforesaid, and that he had neglected to pay the same and whereas a warrant has been issued, directed to C. D., of , commanding him, by distress and sale of the goods and chattels made subject and liable to the said duty by the statute in that behalf, to levy the said last-mentioned sum, being the amount of such duty as aforesaid due and owing from the said E. O., and also the further of , for the costs, charges, and expenses of proceeding for and obtaining the said warrant, and of the proceedings incident and relating thereto, making together the sum of , and it now appearing to me, by the oath of the said C. D., that no sufficient distress can be found whereon to levy the said duty, costs, and charges,* [or, in case any insufficient distress shall have been taken: *and whereas the said C. D. hath certified to me that he hath, under the said warrant, levied and raised the sum of only, and it now appearing to me, by the oath of the said C. D., that no sufficient distress can be found whereon to levy the residue of the said duty, costs, and charges*]: *therefore I command you, the said constable of , to apprehend and take the said E. O. and safely to convey him to the common gaol* [or, *house of correction*] *of the said at , in the said , and there to deliver him to the keeper thereof, together with this warrant: and I do hereby command you, the said keeper, to receive into your custody in the said gaol* [or, *house of correction*] *him the said E. O., and him therein safely to keep until the said sum of* , or *until the sum of , the residue of the said duty, costs, and charges remaining after deducting the said sum of , so levied and raised as aforesaid, shall be fully paid and satisfied. Given under my hand and seal, this day of*

(Signed)

One of his majesty's justices of the peace for the said of

(6.) Form of an information for the recovery of a penalty under this act.

County [or, as the case may be,] *of to wit.* } *Be it remembered, that on the day of , in the year of our Lord , at in the of . A. B. of, &c.* [or, *A. B. an officer of stamp duties, or a collector or farmer of the duty on horses let for hire,* as the case may be.] *cometh before me, C. D., esquire, one of his majesty's justices of the peace for the said and informeth me, the said justice, that E. O. of , heretofore, to wit, on the day of in the year of our Lord , at , in the said did* [here state the offence], *contrary to the form of the statute in such case made and provided, whereby the said E. O. hath forfeited for the said offence the sum of .*

Taken and received by me the day and year first above written.

To E., O., of, &c.

2 & 3 Will. IV. c. 120.

(7.) Form of a summons on the foregoing information.

County [or, as the case may be,] *of to wit.* } *Whereas an information hath been exhibited before me, C. D., esquire, one of his majesty's justices of the peace for the of charging that you, the above-named E. O., on the day of , at , did* [here state the subject of the charge]. *whereby you have forfeited the sum of : these are therefore to require you personally to be and appear before me the said justice, or before such other of his majesty's justices of the peace for the said as shall be then present at , on the day of , at the hour of , in the noon of the same day, then and there to answer the same information and to make your defence thereto, and if you fail to appear accordingly such proceedings will be taken as if you had personally appeared, and had not made any defence to the said charge.*

Given under my hand and seal, this day of

(8.) Form of a conviction on the foregoing information.

County [or, as the case may be,] *of to wit.* } *Be it remembered, that on the day of , at , C. D. of, &c. was duly convicted before me , one of his majesty's justices of the peace for , in pursuance of an act passed in the third year of the reign of his present majesty king William the Fourth, intituled "An Act," &c.* [title of this act], *for that the said C. D., on the day of , did* [here state the offence as the case may happen to be], *contrary to the form of the statute in that case made and provided; for which offence I do adjudge that the said C. D. hath forfeited the sum of , and* [if the justice mitigate the penalty] *which sum of I do hereby mitigate to the sum of over and above the sum of , for the costs and charges of E. F., the informer, in prosecuting this conviction.*

Given under my hand and seal, the day of

(9.) Form of a warrant of distress founded on the foregoing conviction.

To the Constable of , in the of .

County [or, as the case may be,] *of to wit.* } *Whereas E. O., of, &c. has been duly convicted of a certain offence, for that* [here state the offence as in the conviction], *whereby he hath forfeited the sum of ,* [*and*, in case of mitigation, *which hath been mitigated to the sum of*], *over and above the reasonable costs and charges of the informer, allowed and assessed at the sum of : therefore, I command you to levy the said sum of , and also the said sum of for the costs and charges aforesaid, making together the sum of , by distraining the goods and chattels of the said E. O., and by seizing and taking all or any of the carriages, horses, harness, and other things made subject and liable by the statute in that behalf to be seized and taken, to satisfy the penalty, costs, and charges aforesaid; and if within the space of five days next after such distress taken, the said sum of , together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, seized and taken as aforesaid, and shall levy and raise thereout the said sum of and all reasonable costs and charges of taking and keeping and selling such distress, rendering the overplus, if any, to the owner of the said goods and chattels; and you are to certify to me what you shall have done by virtue of this my warrant. Given under my hand and seal, the day of .*

(*Signed*)

One of his majesty's justices of the peace for the said of

(10.) Form of a warrant of commitment for want of a sufficient distress, founded on the foregoing conviction.

To the Constable of , and to the Keeper of the Common Gaol [or, *House of Correction*] *at in the said .*

County [or, as the case may be,] *of to wit.* } *Whereas E. O. of, &c. has been duly convicted of a certain offence, for that* [here state the offence, as in the conviction], *whereby he hath forfeited the sum of* [*and*, in case of mitigation, *which hath been mitigated to the sum*], *over and above the reasonable costs and charges of the informer, allowed and assessed at the sum of , making together the sum of . and whereas it has*

2 & 3 Will. IV. c. 120.

been duly made to appear to me that no sufficient distress can be found whereon to levy the said sum of : therefore I command you, the constable of , to apprehend and take the said E. O., and safely to convey him to the common gaol [or, *house of correction*] *at in the of , and there to deliver him to the keeper, thereof, together with this warrant: and I do hereby command you, the said keeper, to receive into your custody in the said gaol* [or, *house of correction*] *him the said E. O., and him therein safely to keep for the space of , unless the said sum of shall be sooner paid.*

Given under my hand and seal, the day of

(Signed)

One of his majesty's justices of the peace for the said of

Stamps.

Origin of stamp duties.

STAMP duties originally invented by the Dutch in the seventeenth century, then adopted by the French, and first imposed in England as a mere war tax, are now a branch of the perpetual revenue, and are a tax imposed upon all parchment and paper whereon many legal proceedings or private instruments are written; and also upon licences for retailing wines, letting horses to hire, and numerous other purposes; and upon all newspapers, advertisements, cards and dice. These imposts are very various (*a*), according to the nature of the thing stamped or taxed, rising gradually from 1*d.* to 10*l.*, (and indeed, in many cases, as legacies, administrations, conveyances, &c. to an amount proportioned to the property conveyed). (*See* Tomlins's Law Dictionary).

It will be sufficient, for the purposes of this work, to allude only to the jurisdiction and duties of justices of the peace in connection with the stamp laws:—

With respect to evidence as regards stamps, see Vol. II. p. 418.

Several provisions relative to the penalties of the stamp-acts will be found under the different titles of instruments which are subject to stamp duties; viz: *titles "Almanacs," "Cards and Dice," "Medicines," "Newspapers," "Pawning," "Plate," "Promissory Notes," "Stage Coaches,"* &c.

Officers for the stamp duties.

For the management of the stamp duties, the crown may appoint commissioners, who shall substitute inferior officers. (*See* 5 & 6 Will. III. c. 21, s. 7; 9 & 10 Will. III. c. 25, s. 48; 44 Geo. III. c. 98, s. 6.)

By the 4 & 5 Will. IV. c. 60, s. 8, the commissioners of stamps and the commissioners for the affairs of taxes are consolidated into one board and are to be called "the commissioners of stamps and taxes."

Sect. 9. All the powers and authorities heretofore vested in the commissioners of stamps, and the commissioners for the affairs of taxes respectively, shall be had and exercised by the said commissioners.

(*a*) The following is a list of the principal statutes relating to this branch of the law:—

[6 & 7 Will. III. c. 12; 1 Anne, st. 2, c. 22; 8 Anne, c. 9; 10 Anne, c. 19; 5 Geo. III. c. 46; 12 Geo. III. c. 48; 23 Geo. III. c. 58; 26 Geo. III. c. 82; 31 Geo. III. c. 25; 25 Geo. III. c. 55; 36 Geo. III. c. 52; 42 Geo. III. c. 99; 43 Geo. III. c. 126; 44 Geo. III. c. 98; 52 Geo. III. c. 38; 53 Geo. III. c. 108; 55 Geo. III. c. 184; 1 & 2 Geo. IV. c. 55; 3 Geo. IV. c. 117; 5 Geo. IV. c. 41; 9 Geo. IV. c. 27; 9 Geo. IV. c. 49; 3 & 4 Will. IV. c. 23, c. 97; 4 & 5 Will. IV. c. 60; 5 & 6 Will. IV. c. 20 and c. 64; 6 & 7 Will. IV. c. 28; *Ibid*, c. 66; *Ibid*, c. 76; 7 Will. IV. c. 112; 1 & 2 Vict. c. 35; *Ibid*, c. 85; 2 & 3 Vict. c. 52; 3 & 4 Vict. c. 73; *Ibid*, c. 110; 4 & 5 Vict. c. 34; 5 & 6 Vict. c. 79; 6 & 7 Vict. c. 72.]

Stat. 5 & 6 Will. IV c. 20, s. 1, consolidates the offices of receiver-general of the stamp duties and of receiver-general of the land and assessed taxes. 5 & 6 Will. IV. c. 20

Sect. 2 consolidates the offices of accountant and comptroller-general of the stamp duties and of comptroller of accounts of land and assessed taxes. See further, *post, title "Taxes."*

By the 10 Anne, c. 19, sect. 172, "It shall and may be lawful to and for any two or more of the justices of the peace for the time being, residing near to the place where any pecuniary forfeitures, not exceeding 20*l.*, upon this or any of the acts of parliament, touching any of the duties under the management or care of the said commissioners for managing her majesty's duties on stamped vellum, parchment, and paper, shall be incurred, or any offence against any of the same acts shall be committed, in anywise relating to the same duties, or any of them, by which any sum of money only may be forfeited, to hear and determine the same; which said justices of the peace are hereby authorized and required, upon any information exhibited, or complaint made in that behalf, within one year after seizure made, or such offence committed, to summon the party accused and also the witnesses on either side, and upon the appearance or contempt of the party accused,* shall be convicted of the offence alleged against him, and to award and issue out warrants under their hands and seals, for levying any pecuniary penalties so adjudged, on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering to the party the overplus, if any; and if any party shall find himself aggrieved, or remain unsatisfied in the judgment of the said justices, then he or they shall or may, by virtue of this act, complain or appeal to the justices of the peace at the next general quarter sessions for that county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, and, in case of conviction, to issue warrants for levying penalties, as aforesaid." 10 Anne, c. 19. Jurisdiction of justices where the penalty does not exceed 20*l.* * *Sic.* Appeal.

Sect. 173. "That it shall and may be lawful to and for the said respective justices, where they shall see cause, to mitigate or lessen any such penalties, as they in their discretion shall think fit, the reasonable costs and charges of the officers and informers as well in making the discovery, as in the prosecution of the same, being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalties to less than double the duties over and above the said costs and charges; any thing contained in this act or any other act of parliament to the contrary notwithstanding." Mitigation.

By the 26 Geo. III. c. 82, s. 1, it is enacted, That "wheresoever any person shall be convicted before a justice or justices of the peace for any offence to be hereafter committed against any act or acts of parliament now in being, or hereafter to be made, touching or concerning any the duties under the management or care of the said commissioners for managing the duties on stamped vellum, parchment, and paper, by which any pecuniary penalty or sum of money shall be forfeited, the said justice or justices of the peace before whom such person shall be convicted of the said offence, shall levy the said pecuniary penalty or sum of money in such manner as in such act or acts of parliament is contained, and apply the same to such uses and purposes, and in such proportions, as are therein contained and expressly directed, in case the same act or acts of parliament, or any other act or acts of parliament relating thereto, shall expressly direct the application thereof; and in default of such express and sufficient directions in such act or acts of parliament for the application of the said pecuniary penalty, or sum of money so forfeited upon such conviction as aforesaid, then to apply the same in such manner as is hereafter directed." 26 Geo. III. c. 82. Application of penalties.

Sect. 2. "One moiety or half part of all pecuniary penalties or forfeitures which shall be incurred by any person or persons for any offence hereafter to be committed against any law now in being, or hereafter to be made, touching or concerning any the said duties (except where a different

26 Geo. III. c. 82.

mode of application is or shall be in the said law specially prescribed), shall belong, and be applied to the informer or informers prosecuting for the same within the space of six calendar months after such offence is committed, and the other moiety or half part of the said pecuniary penalties or forfeitures (the necessary charges for the recovery thereof being first deducted) shall be paid to the use of his majesty, his heirs, and successors, in the manner hereinafter directed."

Sect. 3. "Every distribution or division of any pecuniary penalty or forfeiture, directed to be made by this or any other act or acts of parliament touching any of the said duties, upon conviction before a justice or justices of the peace as aforesaid, shall be, and is hereby restricted and confined to the prosecuting for the same within the time hereinbefore limited; and that, in default of such prosecution within the time aforesaid, no informer or informers before a justice or justices of the peace as aforesaid, shall have or be entitled to any part or share of such penalty or forfeiture, but that the whole thereof shall belong to his majesty, his heirs, and successors, and shall be recoverable by any the ways and means in or by any such act or acts of parliament in that behalf directed; anything in this, or any of the said acts, contained to the contrary notwithstanding."

Sect. 5. "From and after the passing of this act, in all cases where any pecuniary penalty or forfeiture for any offence committed against this, or any act or acts of parliament now or hereafter to be made, touching any the duties under the management or care of the said commissioners for managing the duties on stamped vellum, parchment, and paper, shall be incurred, it shall and may be lawful for the justice or justices of the peace, before whom any person or persons shall be convicted of the said offence, to cause the conviction upon the same offence to be made out in the form or to the effect following, *mutatis mutandis*, as the case shall happen to be; any thing in any former act contained to the contrary thereof notwithstanding; and every such conviction shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts, or evidence, in any more particular manner; that is to say:

Form of conviction.

'*Be it remembered, that on the day of in the , A. O., of was duly convicted before me, J. P., one of his majesty's justices of the peace for the county of* [or, *before us, J. P. and E. F., two of his majesty's justices of the peace for the county of*, as the case shall happen to be], *in pursuance of an act passed in the year of the reign of for that the said A. O., on the day of now last past, did* [here state the offence against the act, as the case shall happen to be], *contrary to the form of the statute in that case made and provided; and I* [or, *we*, as the case may be] *do declare and adjudge that he, the said A. O., hath forfeited, for his said offence, the sum of , of lawful money of Great Britain, which sum of I* [or, *we*, as the case may be] *do hereby mitigate to the sum of* [here state the mitigated penalty, if necessary], *to be distributed as the law directs. This is the first,* [*second*, or *other offence*, as the case shall happen to be]. *Given under my hand and seal* [or, *our hands and seals*, as the case may require], *this day of .*

Appeal against the conviction.

Which conviction the said justice shall cause to be wrote fairly upon parchment, and returned to the next general quarter sessions of the peace for the county, riding, shire, stewartry, or place, where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county, riding, shire, stewartry or place; and no such conviction shall be removed by *certiorari*, into any court whatsoever, but shall be subject to appeal before the justices of the quarter sessions, in such manner as in and by any such act or acts of parliament is specially directed."

44 Geo. III. c. 98.

Actions for penalties to be in name of attorney-general, &c., or some officer of the stamp duties.

The 44 Geo. III. c. 98, s. 10, enacts, That it shall not be lawful for any person to commence, prosecute, enter, or file any action, bill, plaint, or information, in any of his majesty's courts, or before any justice of the peace or other magistrate whatsoever, against any person, for the recovery of any fine, penalty, or forfeiture, made or incurred by virtue of this or any other act relating to his majesty's stamp duties, unless the same be

commenced, prosecuted, entered, or filed in the name of his majesty's attorney-general, or his majesty's advocate for Scotland, as the case may be, in England or Scotland respectively, or in the name of the solicitor or some other officer of his majesty's stamp duties in England or Scotland respectively. (*See Smith* v. *Gillett*, 4 *Nev. & M.* 228; 2 *Ad. & Ell.* 361.) 44 Geo. III. c. 98.

The 9 Geo. IV. c. 25, s. 1, enacts, That whenever any person has been or shall be appointed solicitor or attorney on behalf of his majesty, under the orders and directions of the commissioners of the treasury, customs, excise, or stamps, or under the order and directions of any commissioners or other persons or person having the management of any other branch of his majesty's revenue, for the time being, it shall and may be lawful for such person to act and practise as such solicitor or attorney, under such orders and directions, in all and every court and courts, jurisdiction and jurisdictions, place and places, in any and every part of the United Kingdom (*a*). 9 Geo. IV. c. 25

And by sect. 10, of 44 Geo. III. all penalties hereby imposed, except where otherwise directed, shall be sued for, recovered, levied or mitigated by such means as any penalty may be by any laws in force on or before 10th October, 1804, relating to the stamp duties, or by action of debt, &c. or information in the courts of record at Westminster, or in the Exchequer in Scotland; and all fines heretofore imposed by any stamp act, shall go to his majesty only, provided that the commissioners of stamps may, in cases where any fine was by any such act given to the informer, give any part thereof as they deem proper, to any person who may inform of or discover any such offence. 44 Geo. III. c. 98. Penalty to informer.

By the 53 Geo. III. c. 108, s. 23, in all actions, informations, proceedings, &c. in the name of his majesty, or in the name of any person on his behalf for the recovery of any duties, debts or penalties granted or imposed by any stamp act now in force, or this act, such duties, &c. shall be recovered with full costs. 53 Geo III. c. 108. Full costs to be recovered.

By sect. 24, the commissioners of stamps may stay proceedings in any prosecution commenced by their direction for the recovering any penalty, on payment of part only of such penalty, with or without costs, or on payment of the costs only or part thereof, as such commissioners may judge fit, and they may give such sums as shall be so paid by way of penalty to the person informing of the offences. Stay of proceedings.

By sect 28, all criminal offences against any of the stamp acts, shall be tried in the county or city, or town and county where committed, or where the offenders are apprehended. Where to be tried.

By 7 & 8 Geo. IV. c 55, s. 7, whenever in any proceeding by action of debt, bill, plaint or information in any of his majesty's superior courts of record in any part of the United Kingdom, or by civil bill in any court of any recorder, chairman, or assistant barrister in Ireland, *or* by information or complaint before any *justice* or *justices of the peace*, in any part of the United Kingdom, for the recovery of any stamp duty or duties, or part of any stamp duty or duties remaining due and unpaid, or for the recovery of any fine, penalty, or forfeiture incurred under or by virtue of any act or acts in force relating to any duties under the management of the commissioners of stamps, any statement, allegation or averment shall be made, that any act, matter or thing had been or was done, or that any proceeding had been or was taken, or that any licence, warrant, instrument, or authority was granted, or signed; or that any notice was signed by the commissioners of stamps, or by any subordinate officer of stamps, or by any person or persons, under and in pursuance of any act or acts in anywise relating to any duties under the management of the commissioners 7 & 8 Geo. IV. c. 55 Averment of certain proceedings relating to stamps to be sufficient evidence of the fact that such proceedings were taken.

(*a*) And, accordingly, a suggestion that the defendant defends by *C. D.* who has been appointed solicitor on behalf of his majesty, and acts as such in his behalf, is a sufficient disclosure to the court that *C. D.* has authority to act under the above statute. (*West* v. *Taunton*, 6 *Bing.* 404: 4 *Moore & P.* 79, *S. C.*)

7 & 8 Geo. IV. c. 55.

of stamps; or that any act, matter, or thing had been or was done, or that any proceeding whatsoever had been or was taken by any such subordinate officer of stamps, or by any other person or persons, under and in obedience to the orders and directions of the commissioners of stamps, or that any proceeding for the recovery of any penalty or forfeiture was commenced, prosecuted, entered or filed by or by the order of any officer or person thereto authorized by law: every and any such statement, allegation or averment shall be and shall be deemed and taken to be sufficient evidence of any and every fact so stated, alleged and averred, without any other or further evidence of any such fact, unless by other evidence the contrary shall be made to appear, any law, custom or usage to the contrary thereof in anywise notwithstanding.

Recovery and application of penalties.

By the 44 Geo. III. c. 98, sect. 27, "All fines imposed by this act, except where otherwise expressly directed, shall be sued for, recovered, levied, or mitigated, as any fine by any laws in force on or before the 10th day of October, 1804, for securing stamp duties, or by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or in the court of Exchequer in Scotland respectively; and after this act all fines, heretofore imposed by any act relating to the duties on vellum, &c., or this act, shall go to the use of the king: Provided, that the commissioners aforesaid may, in every case in which any part of such fine was by any such act given to any informer, give any proportion thereof as they shall deem expedient, to any person who may inform for or discover any offence, in respect of which any such fine may be discovered, or assist in the recovery thereof."

Justices may quash informations.

By the 9 Geo. IV. c. 49, s. 18, justices may quash informations laid by any other person than an officer of stamps, on payment of costs by defendant. See the enactment, *post*, p. 1145.

3 & 4 Will IV. c. 97.

By the 3 & 4 Will. IV. c. 97, intituled "An Act to prevent the selling and uttering of forged Stamps, and to exempt from Stamp Duty artificial Mineral Waters in Great Britain, and to allow a Drawback on the Exportation of Gold and Silver Plate manufactured in Ireland," [29th August, 1833,] reciting, "Whereas the laws heretofore enacted and now in force in Great Britain have been found insufficient to prevent the selling and uttering of forged stamps on vellum, parchment, and paper, and it is expedient to make further enactments in that behalf, it is enacted, That from and after the commencement of this act it shall be lawful for the commissioners of stamps, by writing under the hands of any two or more of them, to grant a licence free of expense to any person whom they in their discretion shall think fit and proper for the purpose (not being a distributor of stamps appointed by the said commissioners, nor a sub-distributor appointed by any such distributor) to vend and deal in stamps at any place or places in Great Britain to be named in such licence: Provided always, that every person to whom any such licence shall be granted shall enter into a bond to his majesty, his heirs and successors, in a penal sum of 100*l.*, conditioned that such licensed person shall not sell or offer for sale or exchange, or keep or have in his possession for the purpose of sale or exchange, any stamp or stamps other than such as he shall have purchased or procured at the head office for stamps in Westminster or Edinburgh, or from some distributor of stamps duly appointed by the said commissioners, or from some person licensed to deal in stamps under the authority of this act: Provided always, that such bond shall not be liable to any stamp duty, and that one licence and one bond only shall be required for any number of persons in copartnership; and provided also, that it shall be lawful for the said commissioners, whenever they shall think fit, by notice in writing signed by any two or more of them, to revoke and make void any such licence as aforesaid."

Commissioners of stamps may license persons to deal in stamps.

Persons licensed to give bond.

Condition thereof.

Bond not liable to stamp duty.

Licence may be revoked.

Particulars to be specified in licences.

Sect. 2. "In every such licence to vend or deal in stamps there shall be truly specified the proper christian name and surname and place of abode of the person to whom the same shall be granted, and a true de-

scription of the house or shop or houses or shops in or at which he shall by such licence be authorized to vend or deal in stamps; and such person shall not be thereby authorized or entitled to vend or deal in stamps in or at any other house, shop, or place than such as shall be so specified and described in such licence." 3 & 4 Will. IV. c. 97.

Sect. 9. "Upon information given to the commissioners of stamps upon the oath of one or more credible person or persons (which oath the said commissioners, or any one or more of them, or any justice of the peace, are and is hereby empowered to administer) that there is reasonable cause to suspect that any such distributor or sub-distributor as aforesaid, or person licensed or who shall have been licensed under the authority of this act, hath in his possession any forged or counterfeit stamp or stamps, it shall be lawful for the said commissioners, or any three or more of them, by warrant under their hands, to authorize any officer or officers of stamp duties, and such officer or officers is and are hereby fully authorized accordingly, with the assistance, if required, of any constable or other peace officer, to enter between the hours of nine in the morning and seven in the evening into the dwelling-house, room, shop, warehouse, outhouse, or other building of or belonging to any distributor or sub-distributor of stamps, or of or belonging to any person licensed, or who at any time within six calendar months then last past shall have been licensed as aforesaid, to vend or deal in stamps; and if, on demand of admittance and notice of such warrant, the door of any such dwelling-house, room, shop, warehouse, outhouse, or other building, or any inner door thereof, shall not be opened, then to break open the same respectively, and to search for and to seize and take into his and their possession all such stamped vellum, parchment, or paper as shall be in any such place as aforesaid, or elsewhere in the custody or possession of such distributor or sub-distributor, or person licensed or having been licensed as aforesaid; and all constables and other peace officers are hereby required, upon the request of any person or persons acting under such warrant, to aid and assist him or them in the execution thereof; and if any constable or other peace officer shall, upon any such request as aforesaid, refuse or neglect to be aiding and assisting in the execution of any such warrant as aforesaid, or if any person shall refuse to permit any such search or seizure as aforesaid to be made, or shall assault, oppose, molest, or obstruct any person employed or acting in the execution or under the authority of any such warrant, or aiding or assisting in the execution thereof, every such constable, peace officer, or other person so offending in any of the cases aforesaid, shall forfeit 50*l.*"

Commissioners of stamps empowered to grant warrants to search and inspect the stocks of stamps of distributors and licensed dealers.

Power of entry.

Penalty for refusing to aid in the execution of such warrants, or assaulting persons employed in the execution thereof, 50*l.*

Sect. 12. "If any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument which at any time whatever hath been or shall or may be provided, made, or used, by or under the direction of the commissioners of stamps, for the purpose of expressing or denoting any stamp duty whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression, resembling, or representing, either wholly or in part, or intended or liable to pass or be mistaken for, the stamp, mark, or impression of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit; or if any person shall fraudulently use, join, fix, or place for, with, or upon any vellum, parchment, or paper any stamp, mark or impression which shall have been cut, torn, or gotten off or removed from

Persons knowingly having forged dies or stamps in their possession;

or fraudulently affixing stamps, &c.;

3 & 4 Will. IV. c. 97

or erasing names dates, &c., with intent to use the stamps again.

or knowingly using any stamped vellum, &c., from which any name, date, &c., shall have been fraudulently erased;

guilty of felony.

or ses of persons suspected of being concerned in the forging of dies or stamps, or in the commission of other felonious acts may be searched.

any other vellum, parchment, or paper; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment or paper any name, sum, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any stamp duty is or shall or may be or become payable; or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper from or off or out of which any such name, sum, date, or other matter or thing as aforesaid shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid; then, and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Sect. 13. "On any information given before any justice of the peace upon the oath of one or more credible person or persons (which oath such justice is hereby empowered to administer) that there is just cause to suspect any person of being or having been in any way engaged or concerned in making any false or counterfeit die, plate, or other instrument, or unlawfully marking or impressing any stamp, mark, or impression on any vellum, parchment, or paper with any such die, plate, or instrument; or in the unlawful possession of any forged or counterfeit die, plate, or instrument, or of any vellum, parchment, or paper with any counterfeit stamp, mark, or impression thereon; or in unlawfully or fraudulently, or without due authority, marking or impressing any lawful stamp on any vellum, parchment, or paper, or in causing or procuring the same to be so marked or impressed, or in aiding, abetting, or assisting in so marking or impressing the same; or in the unlawful possession of any vellum, parchment, or paper, or other material, unlawfully or fraudulently or without due authority stamped or marked, contrary to any of the provisions or regulations contained in any act relating to stamp duties; or of being or having been in any way engaged or concerned in the fraudulent erasing, cutting, scraping, discharging, or getting out of or from or off any stamped vellum, parchment, or paper any matter or thing thereon written, printed, or expressed; or in the unlawful possession of any stamped vellum, parchment, or paper from or off or out of which any matter or thing shall have been fraudulently erased, cut, scraped, discharged, or gotten as aforesaid, then, and in every or any of the said cases it shall be lawful for such justice by warrant under his hand to cause any and every dwelling-house, room, workshop, outhouse, or other building, yard, garden, or other place belonging to such suspected person, or where any such person shall be suspected of being or of having been in any way engaged or concerned in the commission of any such offence as aforesaid, or of secreting any such die, plate, or instrument, or any such vellum, parchment, or paper, or any of the machinery, implements, or utensils necessary or applicable to the commission of any such offence as aforesaid, to be searched for any such stamped vellum, parchment or paper, and for any such die, plate, or instrument, machinery, implement, or utensil, or other matter or thing as aforesaid; and if any of the said several matters and things shall be found in any place so searched, or in the custody or possession of any person whatsoever not having the same by some lawful authority, it shall be lawful for the person finding any such matters or things to seize the same respectively, and to carry the same forthwith to the justice by whom such warrant shall be granted, or to any other justice of the peace having jurisdiction where the same shall be seized, who shall cause the same to be secured and produced in

evidence against any person who shall or may be prosecuted in any court of justice for any of the offences aforesaid; and afterwards the said matters and things so seized, whether produced in evidence or not, shall, by order of the court or judge before whom such offender shall be tried, or by order of some justice of the peace in case there shall be no such trial, be delivered over to the commissioners of stamps, to be defaced or destroyed, or otherwise disposed of, as the said commissioners shall think fit." 3 & 4 Will. IV. c. 97.

Penalty on persons hawking stamps, 20*l.*

Sect. 14. "If any person, whether he shall be licensed to vend or deal in stamps or not, shall hawk or carry about for sale or exchange any stamped vellum, parchment, or paper, or if any person shall utter or offer for sale or exchange, at any house, shop, or place other than the house or shop in which he shall reside or *bonâ fide* carry on his trade or business, any such stamped vellum, parchment, or paper, every such person shall forfeit the sum of 20*l.*, over and above any penalty to which he may be liable for vending or dealing in stamps without being licensed so to do; and it shall moreover be lawful for any person, without any other warrant than this act, for that purpose to apprehend any person so hawking, carrying about, uttering, or offering for sale or exchange such stamped vellum, parchment, or paper, and to take him or cause him to be taken before any justice of the peace having jurisdiction where the offence shall be committed, who shall hear and determine the matter; and if the offender shall not immediately on his conviction pay the said penalty such justice shall commit him to prison for any period of time not less than one nor more than three calendar months, unless such penalty shall be sooner paid or satisfied; and all stamped vellum, parchment, and paper which shall be found in the possession of such offender shall be forfeited to his majesty, and shall be taken possession of by such justice, and be delivered over to the commissioners of stamps, to be disposed of in any manner as they shall think fit: Provided always, that if such offender shall not be apprehended and proceeded against in the manner hereinbefore directed, then the said penalty of 20*l.* shall be recoverable by any other of the ways and means provided for the recovery of penalties incurred under this act."

Hawkers of stamps may be apprehended, and taken before a justice of the peace.

Justices may issue warrants for seizing stamps suspected to be stolen or fraudulently obtained.

Sect. 15. "And for the better preventing and detecting of felonies and frauds in relation to stamped vellum, parchment, or paper, be it enacted, That it shall be lawful for any justice of the peace having jurisdiction where any stamped vellum, parchment, or paper shall be or be supposed to be concealed or deposited, upon any reasonable suspicion that such stamped vellum, parchment, or paper has been stolen or fraudulently obtained, to issue his warrant for the seizing and detaining of such stamped vellum, parchment, and paper, and for apprehending and bringing before such justice or any other justice within the same jurisdiction the person in whose possession or custody such stamped vellum, parchment, or paper shall be found, to be dealt with according to law; and if such person shall omit or refuse to account for the possession of such stamped vellum, parchment, or paper, or shall be unable satisfactorily to account for the possession thereof, or it shall not appear that the same was or were purchased by him at the head office for stamps in Westminster or Edinburgh, or from some distributor or sub-distributor of stamps, or some vendor of stamps duly licensed under the authority of this act, then and in every such case such stamped vellum, parchment, and paper, or such part thereof of which no account or no satisfactory account shall be given, or which shall not appear to have been purchased at either of the said head offices, or from some distributor or sub-distributor of stamps or licensed vendor as aforesaid, shall be forfeited to his majesty, and shall be accordingly condemned by such justice, and thereupon the same shall be delivered over to the commissioners of stamps, who shall keep the same for the space of six calendar months, and afterwards cancel and destroy the same, or dispose thereof for the use of his majesty's revenue, as they shall think fit: Provided always, that if at any time within six calendar months next

3 & 4 Will. IV. c. 97.

after such condemnation any person shall make out to the satisfaction of such justice that the vellum, parchment, or paper so forfeited, or any part thereof, was or were stolen or otherwise fraudulently obtained from him, and it shall also appear that the same was or were purchased by him at either of the said head offices, or from some distributor or sub-distributor or licensed vendor of stamps as aforesaid, it shall be lawful for such person to have the same, or such part thereof as shall be so proved to have been stolen or fraudulently obtained from him, delivered up to him, on producing a certificate under the hand and seal of such justice that the right of such person therein hath been duly proved: Provided also, that no such certificate shall be given unless notice in writing under the hand of such justice shall be given to the solicitor of stamps seven clear days at the least previously to the day of hearing any claim, in respect of such stamped vellum, parchment, or paper, of the time and place appointed for such hearing."

Penalties recoverable in the superior courts.

Sect. 23. "All pecuniary penalties imposed by or which may be incurred under this act may be recovered, for the use of his majesty, his heirs and successors, in any of his majesty's courts of record at Westminster, for any offence committed in England, Wales, or Berwick-upon-Tweed, and in his majesty's court of Exchequer in Scotland for any offence committed in that part of Great Britain called Scotland, by action of debt, bill, plaint, or information, wherein no essoign, protection, or privilege, nor more than one imparlance, shall be allowed: Provided always, that it shall be lawful for the commissioners of stamps to mitigate or compound any such penalty, or to stay proceedings in any action, suit, or prosecution commenced for the recovery thereof, on such terms as the said commissioners shall judge proper and expedient, and also at their discretion to give all or any part of any sum paid by way of penalty or compromise to the person informing them of the offence in respect of which such sum shall be paid."

Commissioners may mitigate penalties, &c.

Any justice of the peace may determine offences subject to penalties upon information by solicitor or officer of stamp duties.

Mode of proceed-

Sect. 24. Provided always, "That it shall be lawful for any justice of the peace having jurisdiction where the offence shall be committed to hear and determine any offence against this act which may subject the offender to any pecuniary penalty, and it shall be lawful for any justice, and he is hereby required, upon information given or complaint made before him by the solicitor, or any other officer of his majesty's stamp duties in England or Scotland, to summon the party accused, and also the witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose, and either on the appearance of the party accused or in default thereof it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party, or by oath of one or more witness or witnesses, to give judgment for the penalty, and to award and issue out his warrant for the levying of any penalty so adjudged, together with the costs and expenses of such proceedings, and also the costs and expenses of such warrant, and of executing the same on the goods of the offender, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus, if any; and where the goods of such offender cannot be found sufficient to answer the penalty and all such costs and expenses, it shall be lawful for such justice and he is hereby required to commit such offender to the common gaol or house of correction, there to remain for any time not less than three calendar months and not exceeding six calendar months, unless such penalty and all such costs and expenses shall be sooner paid and satisfied; and if the person convicted shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have

Appeal.

been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions; and such justices at such sessions are hereby authorized to examine witnesses upon oath, and finally to hear and determine such appeal; and in case the judgment of any such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet: Provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid, unless within three days next after such conviction made he shall enter into a recognizance with two sufficient sureties before such justice to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal: Provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocation, or reduction, or by any other writ or process, into any superior or other court or jurisdiction; any law or usage to the contrary notwithstanding."

3 & 4 Will. IV. c. 97.

Proceedings not to be quashed for want of form, or removed.

Sect. 25. "It shall be lawful for any justice of the peace before whom any person shall be convicted of any offence against the provisions of this act which may subject the offender to any pecuniary penalty to mitigate such penalty as he shall see fit; provided that all reasonable costs and charges expended or incurred in prosecuting for such offence shall be always allowed over and above the sum to which such penalty shall be mitigated, and so as such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges; anything herein contained to the contrary notwithstanding."

Justices may mitigate penalties.

Sect. 26. "All actions and prosecutions which shall be brought or commenced against any person for any thing done in pursuance or under the authority of this act shall be commenced and prosecuted within three calendar months next after the fact committed, and not afterwards, and shall be brought and tried in the county or place where the cause of action shall arise, and not elsewhere; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in such action may plead the general issue, and give this act and any other matter or thing in evidence at any trial to be had thereupon; and if the cause of action shall appear to arise from any matter or thing done in pursuance and by the authority of this act, or if any such action shall be brought after the expiration of such three calendar months, or shall be brought in any other county or place than as aforesaid, or if notice of such action shall not have been given in manner aforesaid, or if tender of sufficient amends shall have been made before such action commenced, or if a sufficient sum of money shall have been paid into court after such action commenced by or on behalf of the defendant, the jury shall find a verdict for the defendant; and if a verdict shall pass for the defendant, or if the plaintiff shall become nonsuit, or shall discontinue any such action or if, on demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs of suit as between attorney and client, and shall have the like remedy for the same as any defendant may have for costs of suit in other cases at law; and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be had shall at the time of such trial certify in writing his approbation of the action and of the verdict obtained thereupon."

Limitation of actions.

Venue.

Notice of action.

General issue.

Tender of amends.

Costs.

By the 6 & 7 Will. III. c. 12, s. 2, any warrant made by, or recognizance taken before any justice or justices of the peace, are declared to be exempted from stamp duties. See also the 44 Geo. III. c. 98, schedule (A.).

Documents exempted from stamps.

The 9 Geo. IV. c. 49. s. 18, enacts, "That from and after the passing of this act, in all cases where any information shall have been laid or shall

Justices may quash informa-

9 Geo. IV. c. 49.

tions laid by any other person than an officer of stamps, on payment of costs.

be laid before any justice or justices of the peace in Great Britain, by any person other than the solicitor of stamps in England or Scotland, or some officer of the stamp duties, for the recovery of any fine, penalty, or forfeiture made or incurred by virtue of any act or acts relating to any duties under the management of the commissioners of stamps, it shall be lawful for the person or persons against whom such information shall have been or shall be laid to apply to the justice or justices of the peace before whom the information shall have been laid, or to the justices of the peace at the general quarter-sessions to which any appeal shall have been or shall be duly made from any conviction obtained or made on any such information, or laid by any person other than as aforesaid, to quash such information or conviction upon payment by the defendant of such costs and charges as to such justice or justices shall seem reasonable; and it shall be lawful for such justice or justices, if they shall think fit so to do, and such justice or justices are hereby authorized and empowered, upon such application, to quash such information or conviction accordingly."

Affidavits before justices, free from duty.

6 & 7 Will. IV. c. 76.

Justices may grant warrants to search for unstamped newspapers, and to seize presses, &c., used in printing same.

The 55 Geo. III. c. 184, exempts (see schedule, *title "Affidavit"*) from all stamp duties, affidavits required or authorized by law to be made before any justice or justices of the peace.

The 6 & 7 Will. IV. c. 76, s. 22, enacts, "That upon information given before any justice of the peace upon the oath of one or more credible person or persons, (which oath such justice is hereby empowered and required to administer,) that there is reasonable and probable cause to suspect any person of being or having been at any time within one calendar month last preceding in any way knowingly and wilfully engaged or concerned in printing, publishing, vending, or otherwise distributing any newspaper not duly stamped as required by law, or of being unlawfully possessed of any newspapers not duly stamped as aforesaid, or that any printing press, engine, machine, types, or other implements or utensils for printing is or are or have been by any person knowingly and wilfully used within the time last aforesaid for the purpose of composing or printing any newspaper not duly stamped as aforesaid, or that any such newspapers are sold or distributed, or kept for sale or distribution, or are unlawfully deposited in any place, then and in every such case it shall be lawful for such justice and he is hereby required, upon the application of any officer of stamp duties, to grant a warrant under his hand, directed to any constable or other peace officer, or any officer of stamp duties, or other person or persons named in such warrant, authorizing and empowering him or them, with such other person or persons as he or they shall call to his or their assistance, to enter and search in the daytime any house, room, shop, warehouse, outhouse, building, or other place belonging to such suspected person, or where such person shall be suspected of being engaged or concerned or of having been engaged or concerned in the commission of any such illegal act as aforesaid, or where any such printing press, engine, machine, types, implements, or utensils suspected to be or to have been used for any such illegal purpose as aforesaid shall be or be suspected to be or where any such newspapers as aforesaid are suspected to be sold or distributed, or kept or deposited as aforesaid: and if upon any such search as aforesaid any newspapers not duly stamped as aforesaid, or any printing press, engine, machine, types, implements, or utensils which shall have been used in printing or publishing any such newspaper as aforesaid within the time last aforesaid, shall be found, it shall be lawful for the person or persons named in such warrant, and his or their assistant or assistants, to seize and take away the same, together with all other presses, engines, machines, types, implements, utensils and materials for printing belonging to the same person, or which shall be found in the same house, room, shop, warehouse, outhouse, building or place; and all such presses, engines, machines, types, implements, utensils and materials, shall be forfeited to the use of his majesty, and shall be proceeded against to condemnation in his majesty's court of Exchequer in England, Scotland or Ireland respectively, in like manner as in the case

of any goods seized, as forfeited for any breach of the laws relating to his majesty's revenues of customs or excise." 6 & 7 Will. IV. c. 76.

Mode of proceeding for recovery of penalties before justices.

Sect. 28. "It shall be lawful for any justice of the peace within whose jurisdiction any offence, the penalty for which shall not exceed 20*l.* shall be committed against this act, and such justice is hereby required, upon any information exhibited or complaint made by any person duly authorized in that behalf (*a*) to summon the party accused, and also the witnesses on either side to be and appear before the said justice or before any other justice of the peace, at a time and place to be appointed for that purpose, and whether the party accused shall appear or not, it shall be lawful for the said justice or any other justice at the time and place appointed for such appearance to proceed to examine into the fact, and upon due proof made thereof to the satisfaction of any such justice, either by confession of the party accused, or by the oath of one or more credible witness or witnesses, to convict such offender, and to give judgment for the penalty and costs to be assessed by any such justice, and to issue his warrant for levying such penalty and costs, and also the reasonable costs and charges attending the distress on the goods of such offender, and to cause sale to be made thereof, in case the same shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods sufficient cannot be found to answer such penalty and costs, such justice, or any other justice of the district or place in which such conviction shall take place, shall commit such offender to the common gaol or house of correction, there to remain for any time not exceeding three calendar months nor less than one calendar month, unless such penalty, costs and charges shall be sooner paid and satisfied: and if any person shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices at the next general or quarter sessions of the peace for the district or place where the offence shall have been committed, which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions, and it shall be lawful for such justices at such sessions to examine witnesses on oath, and finally to hear and determine such appeal: and in case any conviction of such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person convicted to pay such costs occasioned by such appeal as to them shall seem meet: Provided always that no person convicted before any such justice, shall be entitled or permitted to appeal against such conviction in manner aforesaid, unless within three days after such conviction made he shall enter into a recognizance, with two sufficient sureties, before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also such further costs as shall be awarded in case such conviction shall be affirmed on such appeal: Provided also, that no such proceedings so to be taken as aforesaid shall be quashed or vacated for want of form, or shall be removed by *certiorari*, suspension, advocation, or reduction, or by any other writ or process whatsoever, into any superior or other court or jurisdiction in any part of the United Kingdom, any law, statute or usage to the contrary notwithstanding; and provided also, that it shall be lawful for any justice of the peace before whom any person shall be convicted of any offence against this act, to mitigate as he shall see fit, any pecuniary penalty by this act imposed in cases where such justice shall see cause so to do: Provided that all reasonable costs and charges incurred as well in discovering as in prosecuting for such offence shall be always allowed, over and above the sum to which such penalty shall be mitigated; and provided that such

Appeal to sessions.

Notice of appeal.

Sessions may give costs.

Persons convicted to give security on appeal.

No *certiorari*.

Justices may mitigate penalties.

(*a*) See sect. 27. The attorney or solicitor-general, solicitor of stamps and taxes, or "any person authorized to sue or prosecute for the same, by writing under the hands of the commissioners of stamps and taxes," &c.

6 & 7 Will. IV. c. 76.

mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges, anything herein contained to the contrary notwithstanding."

Form of conviction.

Sect. 29. "That the justice before whom any person shall be convicted of any offence under this act shall cause the conviction to be made out in the manner and form following, or in any other form of words to the like effect *mutatis mutandis;* (that is to say:)

"*County of* —— *to wit.* { *Be it remembered, that on the day of in the year of our Lord ; at , A. B., of , was duly convicted before me, C. D., esq., one of his majesty's justices of the peace for the county of , in pursuance of an act passed in the seventh year of the reign of King William the Fourth, intituled* [title of this act], *for that the said A. B.* [here state the offence], *contrary to the form of the statute in that case made and provided, for which offence I do adjudge that the said A. B. hath forfeited the sum of , and* [if the justice mitigate the penalty] *which sum of I do hereby mitigate to the sum of over and above the sum of , which I do allow to E. F., for his reasonable costs and expenses in prosecuting this conviction.*

Given under my hand and seal, this day of ."

Standing Mute. *See ante,* "*Mute.*"

Starch. *See* "*Excise,*" Vol. II.

Starr. *See* "*Bent,*" Vol. I.

Starving, *Murder by, see* "*Apprentice,*" Vol. I. p. 195; "*Homicide,*" Vol. III. p. 808.

State, *Acts of, how proved, see* "*Evidence,*" Vol. II. p. 384;—*Matters of, when privileged from being stated in Evidence, see* "*Evidence,*" Vol. II. p. 429.

Stationers. *See* "*Almanack,*" Vol. I.; *ante,* "*Newspapers,*" "*Printers,*" "*Stamps.*"

Statute Duty. *See* "*Highways in general,*" Vol. III.

Statutes, *and (herein of)* Customs.

Preliminary observations.

IT is said by the elegant and able writer of the *Commentaries,* (Vol. I. p. 57,) that the municipal law of England, or the rule of civil conduct prescribed to the inhabitants of this kingdom, may, with sufficient propriety, be divided into two kinds: the *lex non scripta,* the unwritten or *common law,* and the *lex scripta,* the written or *statute law.*

COMMON LAW.]—The *lex non scripta*, or unwritten law, includes not only *general customs*, or the *common law*, properly so called, but also the particular customs of certain parts of the kingdom, and likewise those *particular laws* that are by custom observed only in certain courts and jurisdictions. It is not to be supposed however, that this *lex non scripta*, or common law, is not evidenced by written documents; for a considerable portion of it is so. (*See* 1 *Bla. Com.* 57, 58.)

Preliminary Observations.

Common law.

This unwritten or common law is distinguishable into three kinds: 1. *General Customs*, which are the universal rule of the *whole kingdom*, and form the common law, in its stricter and more usual signification. 2. *Particular Customs*, which, for the most part, affect only the inhabitants of particular districts. 3. *Certain particular Laws*, which by custom are adopted and used by some particular courts of petty, general, and exclusive jurisdiction. (1 *Bla. Com.* 67.)

Three kinds of.

1st. *As to General Customs, or the Common Law, properly so called.*]—This is that law by which proceedings and determinations in the king's ordinary courts of justice are guided and directed. Amongst other things, *Blackstone* observes, that this, for the most part, settles the solemnities and obligations of contracts; the rules of expounding wills, deeds, and acts of parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffuse themselves as extensively as the ordinary distribution of common justice requires. Thus, for example, amongst other things, that there shall be four superior courts of record—the Chancery, the King's Bench, the Common Pleas, and the Exchequer; that a deed is of no validity unless sealed and delivered; that breaking the peace is an offence, and punishable by fine and imprisonment, &c.

(1.) Common law or general customs.

These customs and maxims are to be known, and their validity is to be determined, by the judges in the several courts of justice. They are the repositories of the law—the living oracles who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land. (1 *Bla. Com.* 69.)

The common law is as absolute as parliamentary law, and must be as rigidly observed.

2nd. *As to Particular Customs, or Laws which affect only the Inhabitants of Particular Districts.*]—These are the remains of that multitude of local customs, out of which the common law, as it now stands, was collected at first by king Alfred, and afterwards by king Edgar and Edward the Confessor; each district mutually sacrificing some of its own special usages, in order that the whole kingdom might enjoy the benefit of one uniform and universal system of laws. But, for reasons that have been now long forgotten, particular counties, cities, towns, manors, and lordships, were very early indulged with the privilege of abiding by their own customs, in contradistinction to the rest of the nation at large; which privilege is confirmed to them by several acts of parliament. (*Mag. Cart.* 9 Hen. III. c. 9; 1 Edw. III. st. 2, c. 9; 14 Edw. III. st. 1, c. 1; 2 Hen. IV. c. 1; 1 *Bla. Com.* 74.)

(2.) Particular customs.

Such is the custom of gavelkind in Kent, and some other parts of the kingdom. Such is the custom that prevails in divers ancient boroughs, and therefore called borough-English, that the youngest son shall inherit the estate, in preference to all his elder brothers, &c. Such, also, are the special and particular customs of manors, of which every one has more or less, and which bind all the copyhold and customary tenants that hold of the said manors. Such, likewise, is the custom of holding divers inferior courts, with power of trying causes, in cities and trading towns, the right of holding which, when no royal grant can be shown, depends entirely upon immemorial and established usage. Such, lastly, are many particular customs within the city of London, with regard to trade, apprentices, widows, orphans, and a variety of other matters. All these

Preliminary Observations.

are contrary to the general law of the land, and are good only by special usage; though the customs of London are also confirmed by act of parliament. (*City of London's case*, 8 *Rep.* 126; *R.* v. *Bagshaw*, *Cro. Car.* 347.)

Customs of merchants.

To this head may most properly be referred a particular system of customs used only among one set of the king's subjects, called the custom of merchants, or *lex mercatoria*; which, however different from the general rules of the common law, is yet ingrafted into it, and made a part of it, (*Winch.* 24,) being allowed, for the benefit of trade, to be of the utmost validity in all commercial transactions: for it is a maxim of law, that "*cuilibet in sua arte credendum est.*" (*See Vallezo* v. *Wheeler*, *Lofft*, 631; *Edin* v. *East India Company*, 1 *W. Bla.* 299; 2 *Burr.* 1216.)

The rules relating to particular customs regard either the *proof* of their existence, their *legality* when proved, or their usual method of *allowance*.

What requisite to a good custom.

If the custom be not a good custom, it ought to be no longer used; "*malus usus abolendus est*" is an established maxim of the law. To make a particular custom good, the following are necessary requisites:

Beyond memory.

1. *That it have been used so long, that the memory of man runneth not to the contrary.* So that, if any one can show the beginning of it, it is no good custom

For which reason, no custom can prevail against an express act of parliament; since the statute itself is a proof of a time when such a custom did not exist. (*Co. Lit.* 114.) A custom that every *pound* of butter sold in a certain market should weigh eighteen ounces, is bad, because it is directly contrary to the 13 & 14 Car. II. c. 26, which directs that every pound throughout the kingdom shall contain sixteen ounces. (*Noble* v. *Durell*, *see* 3 *T. R.* 271.)(*a*). In which case, it seemed to be the opinion of the judges, that a custom to sell *lumps* of butter, containing eighteen or any other stated number of ounces, might be good and valid. The inconvenience arises from that which is every where called a pound being different in amount of weight in different parts of the kingdom, by which fraud and deception may be readily practised. Therefore, where a contract is made to sell specified goods by quantities of weight or measure, this must mean *statute* weight or measure. (*See Hockin* v. *Cooke*, 4 *T. R*, 314; *Master, &c., of St. Cross* v. *Lord Howard de Walden*. 6 *T. R.* 338; *Moller* v. *Living*, 4 *Taun.* 102; *Law* v. *Hodson*, 11 *East*, 300.)

Where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a mandamus for allowing a poor rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since the 43 Eliz. c. 2, of appointing separate churchwardens and overseers, and of making separate rates for the borough, and for those parts of the parish which lay without the borough; it was holden that such custom was invalid, and the return was quashed accordingly. (*R.* v. *Gordon*, 1 *B. & Ald.* 524.)

What is time immemorial.

The memory of man is taken in law to run to the beginning of the reign of Richard I.; consequently, if it can be shown that the custom commenced at any time since, or did not exist before, that period, it is invalid But a regular usage for twenty years, unexplained and uncontradicted, is sufficient to warrant a jury in finding an immemorial custom. (*R.* v. *Joliffe*, 2 *B. & C.* 54; 3 *D. & R.* 240, *S. C.*; *Bealey* v. *Shaw*, 6 *East*, 214; 2 *Saund.* 175, *a. d.*)

Prescription act, 2 & 3 Will. IV. c. 71.

The statute of 2 & 3 Will. IV. c. 71, shortens the time of *prescription* in certain cases.

By sect. 1, claims to the right of common and other profits, *à prendre*, are not to be defeated after *thirty* years' enjoyment, by showing the commencement; and after *sixty* years' enjoyment, the right is to be deemed

(*a*) Query whether a custom to demise by parcel an incorporeal hereditament (for instance, a right of common) can be supported at law. (*Lathbury* v. *Arnold*, 1 *Bingh.* 219; 8 *Moore*, 72, *S. C.*; *and see R.* v. *Lane*, 1 *D. & Ry.* 76; 5 *B. & Ald.* 488, *S. C.*)

absolute, unless had by consent or agreement.—By sect. 2, in claims of right of way or other easement, the periods are to be twenty years and forty years.—By sect. 3, a claim to the use of light enjoyed for twenty years shall be indefeasible, unless shown to have been by consent.—By sect. 4, the before-mentioned periods are to be deemed those next before suits for the claims to which such periods relate.—By sect. 5, in actions on the case, the claimant may allege his right generally as at present. In pleas of trespass and other pleadings, where the party used to allege his claim from time immemorial, the period mentioned in this statute may be alleged, and the exceptions or other matters may be replied specially.—Sect. 6 restrains the presumption to be allowed in support of claims thereinbefore provided for.—Sect. 7 contains a proviso as to infants and others.—Sect. 8 contains a proviso as to certain time being included in computing the term of forty years, appointed by the act.

Preliminary Observations.

2. *It must have been continued.* Any interruption would cause a temporary ceasing: the revival gives it a new beginning, which will be within time of memory, and thereupon the custom will be void. But this must be understood with regard to an interruption of the *right*; for an interruption of the *possession* only, for ten or twenty years, will not destroy the custom. (*Co. Lit.* 114.) As, if the inhabitants of a parish have a customary right of watering their cattle at a certain pool, the custom is not destroyed though they do not use it for ten years; it only becomes more difficult to prove: but if the *right* be any how discontinued for a day, the custom is quite at an end.

Must have been uninterrupted.

3. *It must have been peaceable, and acquiesced in*; not subject to contention and dispute. (*Id.*) For, as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting. (1 *Bla. Com.* 77.)

Immemorial acquiescence necessary.

4. *Customs must be reasonable,* (*Lit. s.* 212; *Taylor* v. *Devey*, 7 *A. & E.* 409.) or, rather, taken negatively, they must not be unreasonable. Which is not always, as Sir Edward Coke says, (1 *Inst.* 62,) to be understood of every unlearned man's reason, but of artificial and legal reason, warranted by authority of law. Upon which account, a custom may be good, though the particular reason of it cannot be assigned; for it sufficeth if no good legal reason can be assigned against it. Thus, a custom in a parish that no man shall put his beasts into the common till the 3rd of October would be good; and yet it would be hard to show the reason why that day in particular is fixed upon, rather than the day before or after. But a custom that no cattle shall be put in till the lord of the manor has first put in his, is unreasonable, and therefore bad; for, peradventure, the lord will never put in his, and then the tenants will lose all their profits. (*Co. Copyhold, s.* 33.)

Must not be unreasonable.

A custom that tenants, whether by parol or deed, shall have the away going crop after the expiration of their terms, is good. (*Wigglesworth* v. *Dallison*, 1 *Doug.* 201; *and see* 1 *Bligh.* 287.)

So is a custom that a tenant may leave his away going crop in the barn, &c., after he has quitted the premises. (*Beavan* v. *Delahay*, 1 *H. Bla.* 5; *Lewis* v. *Harris*, *Id.* 7 *n.*)

A custom "that all the inhabitants of a manor shall grind all their corn, grain, and malt, which by them or any of them shall be used or spent on the ground within a manor, at a certain mill," is good. (*Cort* v. *Birkbeck*, 1 *Dougl.* 218.)

A custom "that all the tenants, resiants, and inhabitants, within a manor, should grind at the lord's mill all their corn and grain, as well growing within the manor as brought from other places, and spent or consumed in a ground state in their respective houses within the manor," may be a good custom; but it does not extend to restrain the inhabitants who do not grow corn or grain, or who have no corn and grain of their own, from buying or using in such houses ground corn or flour, though

Preliminary Observations.

it may not have been ground or grown within the manor, but produced from corn ground at other mills. (*Richardson* v. *Walker*, 4 *D. & R.* 498; 2 *B. & C.* 827, *S. C.*)

And where by the custom of a manor, all the tenants, resiants, and inhabitants, within the manor, were bound to grind all their corn, grain, and malt, as well growing within the manor, as brought from other places, and which after the grinding thereof should be spent or consumed in a ground state in their houses, at two ancient mills belonging to the lord, or one of them at their own option, and the lord having pulled down one of the mills so as to deprive the tenants of their option, it was held that the custom was suspended. (*Richardson* v. *Capes*, 4 *D. & R.* 512; 2 *B. & C.* 841, *S. C.*)

In an action upon the case upon a custom for not grinding at plaintiff's mills, plaintiff may declare generally upon a custom for a certain toll without specifying the particular toll, or the consideration for it, or that it is a reasonable toll, and a continuance of uniform payment and acquiescence is evidence of its reasonableness, and the court shall judge, under all the circumstances, what is reasonable. (*Gard* v. *Callard*, 6 *M. & Sel.* 69.)

A custom by which the town crier has an exclusive privilege of ringing a bell at all sales by auction within the town is good. (*Jones* v. *Waters*, 1 *Crom. M. & R.* 713; 1 *Gale Rep.* 5, *S. C.*)

A custom is void which is unreasonable, uncertain, savours too much of arbitrary power, and tends to make a lord of a manor a judge in his own cause. (*Wilkes* v. *Broadbent*, 1 *Wils.* 63.)

A custom to take profits in *alieno suo* is bad; (*Blewitt* v. *Tregonning*, 1 *H. & W.* 431;) but a custom to an easement in *alieno suo* may be good. (*Fitch* v. *Rawlings*, 2 *H. Bla.* 393; *Pain* v. *Patrick*, 3 *Mod.* 293.)

A custom for the stanners of Devonshire to divert water from streams into their mines, and for that purpose to dig trenches over other people's lands is void. (*Bastard* v. *Smith*, 2 *M. & Rob.* 129.)

It is no objection to a custom that it is not conformable to the common law of the and. (*Horton* v. *Beckman*, 6 *T. R.* 760, 764; *and see Hardy* v. *Holliday*, 4 *T. R.* 718, *n.*) But the usage of a particular place cannot vary the general law. (*R.* v. *Saltern*, *Cald.* 444.)

Or uncertain.

5. *Customs ought to be certain.* A custom, that lands shall descend to the most worthy of the owner's blood, is void; for how shall this worth be determined? But a custom to descend to the next male of the blood, exclusive of females, is certain, and therefore good. (*Roll. Abr.* 565.)

A custom to pay 2*d.* an acre in lieu of tithes, is good; but to pay sometimes 2*d.* and sometimes 3*d.*, as the occupier of the land pleases, is bad for its uncertainty. Yet a custom to pay a year's improved value for a fine on a copyhold estate, is good; though the value is a thing uncertain: for the value may at any time be ascertained; and the maxim of law is, *id certum est quod certum reddi potest.* (*Id.*)

A custom, that poor housekeepers shall carry away rotten wood in a chase is bad, being too vague and uncertain. (*Selby* v. *Robinson*, 2 *T. R.* 758.)

So is a custom for the inhabitants of a parish to take from a private close which adjoins the sea, sand drifted there, for manure. (*Blewitt* v. *Tregonning*, 1 *H. & W.* 431.)

A right to glean in the harvest cannot be claimed at common law; neither have the poor of a parish legally settled as such any such right within the parish. (*Steel* v. *Houghton*, 1 *Hen. Bla.* 51, 52. *See, ante,* "*Gleaning,*" Vol. III.)

So is a custom for every *inhabitant* of an ancient messuage within a parish to take a profit *à prendre* in the land of an individual bad. But such a right may be enjoyed by prescription or grant. (*Grinstead* v. *Marlowe*, 4 *T. R.* 717, 718; *Fitch* v. *Rawlings*, 2 *Hen. Bla.* 393; *Weekly* v. *Wildman*, 1 *Ld. Raym.* 407; 1 *Saun.* 341, *n.* 3; 346, *n.* 3.)

A custom to take sand drifted by the sea is bad. (*Blewitt* v. *Tregonning*, 5 *Nev. & M.* 234, 308; 1 *Harr. & W.* 431 *S. C.*)

A custom for all the *inhabitants* of a parish to play "at all kinds of lawful games, sports, and pastimes in the close of A. at all seasonable times of the year, at their free will and pleasure," is good; but a similar custom "for all persons for the time being, being in the said parish," is bad. (*Fitch* v. *Rawlings*, 2 *H. Bla.* 393.)

Preliminary Observations.

A custom may be to do a thing several ways, if not inconsistent. (*Anon. Lofft*, 398.)

6. *Customs, though established by consent must be (when established) compulsory;* and not left to the option of every man, whether he will use them or no. Therefore, a custom, that all the inhabitants shall be rated toward the maintenance of a bridge, will be good; but a custom, that every man is to contribute thereto at his own pleasure, is idle and absurd, and indeed no custom at all.

Must be compulsory.

7. *Lastly, customs must be consistent with each other*: one custom cannot be set up in opposition to another; for, if both are really customs, then both are of equal antiquity, and both established by mutual consent: which to say of contradictory customs is absurd. Therefore, if one man prescribes that by custom he has a right to have windows looking into another's garden, the other cannot claim a right by custom to stop up or obstruct those windows; for these two contradictory customs cannot both be good, nor both stand together. He ought rather to deny the existence of the former custom. (*Aldred's Case*, 9 *Rep.* 58; 1 *Bla. Com.* 78.)

And consistent with each other

Next, as to the allowance of special customs. Customs in derogation of the common law must be construed strictly. Thus, by the custom of gavelkind, an infant of fifteen years may, by one species of conveyance (called a deed of feoffment), convey away his lands in fee simple, or for ever. Yet this custom does not empower him to use any other conveyance, or even to lease them for seven years; for the custom must be strictly pursued. (*Co. Cop. s.* 33). However, if there is a custom in a manor that a man may convey his copyhold in fee simple, it will also enable him to convey for life or any other estate; for the less is implied in the greater, and though customs must be strictly, yet they need not in every case be literally, construed. (*Co. Cop. s.* 133.)

Must be construed strictly.

Moreover, all special customs must submit to the queen's prerogative. Therefore, if the queen purchases lands of the nature of gavelkind, where all the sons inherit equally; yet, upon the queen's demise, her eldest son shall succeed to those lands alone. (*Co. Lit.* 15; 1 *Bla. Com.* 78.)

And thus much for the second part of the *leges non scriptæ*, or those particular customs which affect particular persons or districts only.

3rd: *As to those peculiar laws which by custom are adopted and used only in certain peculiar courts and jurisdictions, they are to be understood as the civil and canon laws.* (*See* 1 *Bla. Com.* 79.)

(3.) Peculiar laws used in particular courts, are the civil and canon laws.

Statute Law.]—We will now proceed as to the statute law, or, in other words, the *leges scriptæ;* which consist of statutes, acts, or edicts made by the queen's majesty, by and with the advice and consent of the lords spiritual and temporal and commons in parliament assembled. (1 *Bla. Com.* 78 (*a*); *Com. Dig. Parliament, R.* 3.)

Statute law.

Many ancient statutes are penned in the form of charters, ordinances, commands, or prohibitions from the king, without mentioning the concurrence of either lords or commons; yet, inasmuch as they have always been acquiesced in as unquestionably authentic, this establishes and confirms their authority, and the defect is salved by such universal reception. (*Hawkins's Preface to Statutes.*)

Statutes not in the name of the whole legislature.

Others make mention of the king and lords only, though to many of these latter, the assent of the commons may be presumed to have been

(*a*) The oldest statute now extant, and printed in our statute books, is the famous *Magna Charta*, as confirmed in parliament, 9 Hen. III.; though, doubtless, there were many acts before that time.

given—lastly, an instance is not wanting of an act of parliament passed by the king and commons without the lords, *viz.* 1 Edw. VI. c. 5.

As regards the making of these statutes, *see* 1 *Bla. Com. Parliament; Com. Dig. Parliament; Bac. Ab. Statutes; Dwarris on Stat.* 4, 6. For the nature of ordinances, patents, and charters, and the difference between them and statutes, *see Dwar. on Stat.* 3.

We will now proceed to inquire into—

I. *The different Kinds of Statutes*, p. 1154.
II. *What Statutes are Void*, p. 1158.
III. *Of the Form and Parts of a Statute*, p. 1159.
IV. *Time when Statute begins to take Effect, and how long it remains in Force*, p. 1160.
V. *Of the Authority of Statutes*, p. 1162.
VI. *Things incidental to, and necessarily implied in*, p. 1163.
VII. *Construction of*, p. 1167.
VIII. *Repeal of, what shall be, and effect of*, p. 1178.
IX. *How disobedience to, may be punished, &c.* p. 1181.
X. *Of Pleading a Statute, and Proof of*, p. 1181.

I. The different Kinds of Statutes.

Either public, general, or private.

PUBLIC OR PRIVATE STATUTES.]—Statutes are either general or special, public or private.

Public acts, what.

A *general* or *public* act is an universal rule, that regards the whole community; and of this the courts of law are bound to take notice judicially and *ex officio*; without the statute being particularly pleaded, or formally set forth by the party who claims an advantage under it. (1 *Bla. Com.* 85.)

Private acts, what.

Special or *private* acts are rather exceptions than rules, being those which only operate upon particular persons and private concerns: such as the Romans entitled *senatus decreta*, in contradistinction to the *senatus consulta*, which regarded the whole community; and of these (which are not promulgated with the same notoriety as the former) the judges are not bound to take notice, unless they be formally shown and pleaded.

Local and personal.

Of private acts some are *local*, as affecting particular places only; others *personal*, as confined to particular persons: of the first kind, an inclosure act is an example; of the second, an act for divorce, or change of name. In many acts which would otherwise be private statutes, an express clause is now usually introduced directing that they shall be considered as public. As to such clause see "*Evidence*," Vol. II. p. 383.

Instances.

To show the distinction between public and private acts, it should be observed, that the 13 Eliz. c. 10, to prevent spiritual persons from making leases for longer terms than twenty-one years, or three lives, is a public act; it being a rule prescribed to the whole body of spiritual persons in the nation: but an act to enable the Bishop of Chester to make a lease to A. B. for sixty years is an exception to this rule; it concerns only the parties and the bishop's successors; and is therefore a private act. (1 *Bla. Com.* 86.)

All acts which concern the king or queen, or the prince, are general and public acts. (8 *Co.* 28 *a.*; *the Prince's case*, 4 *Rep.* 13, 77 *a.*)

So, a statute which concerns the whole spirituality, will be a general

and public act: as the 21 Hen. VIII. c. 13. (*Holland's case*, 4 *Rep* 76 *a*; *Brownl.* 208.)

1. *The different Kinds of.*

So, a statute which concerns all officers in general: as the 21 Will. I. c. 26, that no sheriff or other minister take reward, &c. (*Holland's case*, 4 *Rep.* 76 *a.*)

So, a statute which concerns trade in general. (*Holland's case*, 4 *Rep.* 76 *b.*; *Lutw.* 1410; *Kirk* v. *Nowill*, 1 *T. R* 125.)

So, a statute by which penalties are given to the king: as the 2 P. & M. c. 11, relating to woollen weavers, &c. (*Skin.* 429.)

So, a statute which concerns all the lords generally: as the stat. *Marl.* 3. (*Holland's case*, 4 *Rep.* 76 *b.*)

So if it concerns all persons generally, though it be but a special or particular thing: as, a statute which concerns appeals or assizes, or other particular action. (*Id.*)

A statute which concerns only a particular species or thing, or person, will be a private act, of which the judges will not take notice without pleading it: as, the 18 Eliz. c. 6, touching the colleges only in the universities; (*Eton and Winchester*, 4 *Rep.* 76 *a.*;) and acts for the toleration of dissenters. (4 *Co.* 76 *a. b.*)

In a private act of parliament, the legislature only lends its aid to the agreement of the parties, in order to render it effectual when any public reason stands in the way. (By Ld *Mansfield*, *C.J.*, *R.* v. *Toms*, *Dougl.* 406.)

It is a rule, that private acts of parliament, introduced only for the settlement of particular estates, ought to be considered only as common conveyances, and directed by the same rules of law. (By Ld. *Hardwicke*, *C. J.*, *Hornby* v. *Houlditch*, 1 *T. R.* 93, n. *a.*; *Lucy* v. *Levington*, 1 *Vent.* 176; *and see Eton College* v. *Bishop of Winchester*, *Loffl*, 401.)

So, a statute which relates to a particular place or town, will be a private law, though it concerns all persons: as, if it relates to such a manor, town, &c. (4 *Rep. b.*, *Skin.* 350.)

So, if it relates to a particular trade. (*Holland's case*, 4 *Rep.* 76; *Kirk* v. *Nowill*, 1 *T. R.* 125.)

Or to divers particular towns. (*Holland's case*, 4 *Rep.* 76 *b.*)

Or to one or divers particular counties. (*Id.*)

But if an act of parliament for the formation of a railway, contain a declaration that it is to be judicially taken notice of as a public act, it cannot be treated or construed as a private assurance. (*Hargreaves* v. *Lancaster and Preston Railway Company*, 1 *Railw. Cas.* 416.)

Although a statute be of a private nature, yet if a forfeiture be thereby given to the queen, it is a public statute. (*R.* v. *Baggs*, *Skin.* 429.) And a private act if recognized by a public act, must afterwards be noticed by the courts as a general law (2 *Term Rep.* 569.)

In a general act there may be a private clause; as in the 3 Jac. I. c. 5, the clause which gives the benefices of recusants in such particular counties to the university, is a private law. (*Case of the Chancellor of the University of Oxford*, 10 *Rep.* 57 *b.*)

A canal act is not rendered a public act by containing provisions empowering the company to regulate and take tonnage rates and tolls from persons using the canal. (*Brett* v. *Beales*, 1 *M. & M. C. N. P.* 425.)

Private statutes, unlike general acts will not bind strangers, though they may contain no saving of their rights, thus it has been laid down that if a statute reciting that whereas there was a controversy concerning land between A. and B. should enact that A should enjoy it, this would not bind the interest of third persons in that land; (*Lucy* v. *Levington*, 1 *Ventr.* 175;) but a party interested in the subject-matter of a private act of parliament will have his rights affected by its provisions, though it may have been introduced and passed without notice duly given to him. (*Edinburgh Railway Comp.* v. *Wauchope*, 8 *Cl. & Fin.* 710.)

A private act of parliament containing a clause, "That it shall be deemed and taken to be a public act, and shall be judicially taken notice

1. *The different Kinds of.*

of without being specially pleaded, may be proved in the same manner as public acts, (and as to which see '*Evidence*,' Vol. II. p. 383,) though it may not have the effect of a public act." (*Beaumont* v. *Mountain*, 10 *Bingh.* 404; *Woodward* v. *Cotton*, 1 *Crom. M. & Ros.* 44; 4 *Tyrwhitt*, 689, *S. C.*; *Brett* v. *Beales*, *M. & M.* 421; *Hesse* v. *Stevenson*, 3 *B. & P.* 565; *Purchard* v. *Heywood*, 8 *T. R.* 468.)

A Court of Requests Act (made public by last clause,) giving commissioners jurisdiction over debts wheresoever contracted, if defendant be within their jurisdiction, was held to be a public, local, *and* personal act, within 5 & 6 Vict. c. 97, s. 5. (*Cock* v. *Gent*, 12 *M. & W.* 234.)

Declaratory statutes, what.

DECLARATORY STATUTES.]—Statutes also are either *declaratory* of the common law, or *remedial* of some defects therein.

Declaratory, where the old custom of the kingdom is almost fallen into disuse, or become disputable; in which case the parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the common law is and ever hath been. Thus, the statutes of treasons, 25 Edw. III. c. 2, doth not make any new species of treasons, but only, for the benefit of the subject, *declares* and enumerates those several kinds of offence which were before treason at the common law. (1 *Bla. Com.* 86.)

So, the 46 Geo. III. c. 37, *declares* that a witness cannot *by law* refuse to answer a question relevant to the matter in issue, the answering which has no tendency to accuse himself or expose him to penalty or forfeiture, though his answer may subject him to a civil action. This statute does not profess to introduce a *new* law, but only *declares* what is the existing law, in consequence of the contrariety of opinions delivered by the judges. (*See "Evidence,"* Vol. II. p. 383.)

The word *declare* in the act expounds what was the common law before. (*Twynne's Case*, 3 *Rep.*)

Affirmative and negative.

Declaratory acts are either affirmative or negative. A statute made in the affirmative without any negative expressed or implied does not take away the common law. (2 *Inst.* 200; 1 *Inst.* 111. 115; *Pl. Com.* 112.)

Affirmative do not take away common law.

Thus, by 43 Edw. III. c. 11, it is enacted, That the panel of assize shall be arranged four days before the day of assize; yet if this be done two days before it is good, for two days were sufficient at the common law.

Nor a former custom

Where *Southwark* chose scavengers by custom, the 14 Car. II. c. 2, which says, *constables and churchwardens, &c., shall meet in Easter week, and choose*, does not take away a custom to choose at the last. (*Dub. Mayor, &c., of London* v. *Gatford*, 2 *Mod.* 41.)

Nor prior exemption.

So, affirmative statutes do not take away a prior exemption. (*R.* v. *Pugh*, *Dougl.* 188.)

But negative do.

A negative statute, on the other hand, so binds the common law that a man cannot afterwards have recourse to the latter. (*Bro. Parl.* 72.)

Difference between affirmative and negative statutes.

The difference between affirmative and negative statutes may be thus illustrated. If a statute were made that it should be lawful for tenant in fee simple to make a lease for twenty-one years and that such lease should be good, this affirmative statute cannot restrain him from making a lease for sixty years, because such would be good at common law: but if it have negative words, as *that* it *shall not* be lawful for him to make a lease for above twenty-one years, or that a lease for more *should not be good*, he will be restrained.

It is a question of much difficulty and of some importance whether, since an affirmative statute does not take away a custom, a negative statute will do so—the better opinion, supported by the authority of Lord Coke, seems to be that it will not—but later cases tend to establish a contrary doctrine. (*See Dw. on Stat.* 639.)

Remedial statutes, what.

REMEDIAL STATUTES.]—Are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever.

And this being done, either by enlarging the common law where it was too narrow and circumscribed, or by restraining it where it was too lax and luxuriant, hath occasioned another subordinate division of remedial acts of parliament into enlarging and restraining statutes. Instance the case of treason, in clipping the current coin of the kingdom, which was an offence not sufficiently guarded against by the common law; therefore it was thought expedient, by the 5 Eliz. c. 11, to make it high treason, which it was not at the common law: so that this was an enlarging statute. At common law, also, spiritual corporations might lease out their estates for any term of years, till prevented by the 13 Eliz. before mentioned: this was, therefore, a restraining statute.

1. *The different Kinds of.*

Enlarging and restraining statutes, what.

In legal language a *remedial* statute has a further signification, *viz.* a statute giving a party a mode of remedy for a wrong where he had none or a different one before: *e. g.* the statutes of hue and cry, (now repealed by, but most of the enactments re-enacted by, the 7 & 8 Geo. IV. c. 31.) These statutes neither enlarged nor abridged the common law, and therefore neither supplied its defects or restrained its excesses; but, as the common law itself originally provided for an exigency, so did the statute. Of such a description, namely, remedial, is the giving the owner a right to recover the stolen thing of the person who may have purchased it, provided such owner shall have proceeded to conviction. So, also, the statutes against gaming, which give the loser a right to recover the money lost. (1 *Bla. Com. by Lee, p.* 87, *n.* 31.)

A penal statute may also be a remedial law. (*Sir W. Wynne* v. *Middleton*, 1 *Wils.* 126.)

Statute penal as well as remedial.

And a statute may be penal in one part and remedial in another part. (*Dougl.* 702.)

Where a statute gives accumulated damages to the party grieved it is not penal. (*Woodgate* v. *Knatchbull*, 2 *T. R.* 154.)

The statute 4 Geo. II. c. 28, s. 1, is, it seems, a remedial law, (*Wilkinson* v. *Colley*, 5 *Burr.* 2694,) though this was denied by Ld. *Ellenborough*, C. J. in *Lloyd* v. *Rosbee*, 2 *Camp.* 454. The 7 Geo. II. c. 8, is a remedial rather than a penal act. (*Billing* v. *Flight*, 6 *Taunt.* 419.)

The 11 Geo. II. c. 19, is a remedial and not a penal act. (*Stanley* v. *Wharton*, 9 *Price*, 304.)

The 24 Geo. II. c. 44, is not a penal act. (*Joy* v. *Orchard*, 2 *B. & P.* 39.)

A statute for suppression of wrong, or for public good, shall be construed like a remedial act, though it be penal against the offenders. (*Pl. Com.* 82 *a*, 17 *a*.)

It is questionable whether the 21 Geo. III. c. 37, prohibiting the exportation of British machinery, is remedial or penal. (*Att. Gen.* v. *Jeffreys*, *M'Clel.* 270; 13 *Price*, 545, *S. C.*)

Penal statutes.

Penal Statutes.]—Penal statutes are acts of parliament whereby a forfeiture is inflicted for transgressing the provisions therein contained.

Where a thing is prohibited under a penalty, if the penalty, or part of it, be not given to him who will sue for the same, it goes and belongs to the king. (*Rast. Entr.* 433; 2 *Hawk. P. C. c.* 24, *s.* 17.) The king cannot grant to any person any penalty or forfeiture, &c., due by any statute, before judgment thereupon had; (Stat. 21 Jac. I. c. 3;) though after plea pleaded, justices of assize, &c., having power to hear and determine offences done against any penal statute, may compound the penalties with the defendant, by virtue of the king's warrant or privy seal. (*See* "*Informations*," Vol. III.)

Where penalties are ordained by penal acts of parliament to be recovered in any court of record, this is to be understood only of the courts at Westminster, and not of the courts of record of inferior jurisdictions. (*See Jenk. Cent.* 228.)

Where a statute gives accumulated damages to the party grieved, it is not a penal statute. (*Woodgate* v. *Knatchbull*, 2 *T. R.* 154.)

2. *What Statutes are void.*

The stat. of Glou. 5, which gives treble damages, &c. in waste, against tenant for years, extends by equity to a tenant for half a year. (*Pl. Com.* 178.)

The stat. Will. II., which gives debt against a gaoler for an escape of one committed for arrearages of an account, extends to an escape of any committed in execution for debt. (*Pl. Com.* 178 *a*, 35 *a*.)

So the stat. of Glou. 5, which gives remedy for waste against a lessee, extends to a devisee for life or years. (*Pl. Com.* 10 *a*.)

The stat. 1 Edw. II., *de fragentibus prisonam*, says *that a felon who breaks prison shall be guilty of felony;* but it shall not be so if the prison was on fire. (*Pl. Com.* 13.)

II. What Statutes are Void.

Acts derogatory to the power of subsequent parliaments bind not.

Acts of Parliament derogatory from the power of subsequent parliaments bind not. So, the 11 Hen. VII. c. 1, which directs that no person, for assisting a king *de facto*, shall be attainted of treason by act of parliament, or otherwise, is held to be good only as to common prosecutions for high treason; but will not restrain or clog any parliamentary attainder. (4 *Inst.* 43.) Because the legislature, being in truth the sovereign power, is always of equal, always of absolute, authority: it acknowledges no superior upon earth, which the prior legislature must have been, if its ordinances could bind a subsequent parliament. And upon the same principle, Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses, which endeavour to tie up the hands of succeeding legislatures. "When you repeal the law itself," says he, "you, at the same time, repeal the prohibitory clause, which guards against such repeal." (1 *Blu. Com.* 90.)

Statutes enacting impossibilities, are invalid. So, where absurdities follow.

Acts of Parliament that are impossible to be performed are of no validity; and, if there arise out of them collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable, there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it. Thus, if an act of parliament gives a man power to try all causes that arise within his manor or Dale, yet if a cause should arise in which he himself is a party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. (*Bonham's Case*, 8 *Rep.* 118.) But if we could conceive it possible for the parliament to enact, that he should try as well his own causes as those of other persons, there is no court that has power to defeat the intent of the legislature, when couched in such evident and express words as to leave no doubt whether it was the intent of the legislature or no. (*Id.*)

If an act of parliament is clearly and unequivocally expressed, with all deference to the learned commentator, I conceive it is neither void in its direct nor collateral consequences, however absurd and unreasonable they may appear. If the expression will admit of doubt, it will not then be presumed that the construction can be agreeable to the intention of the legis-

lature, the consequences of which are unreasonable; but, where the signification of a statute is manifest, no authority less than that of parliament can restrain its operation. (1 *Bla. Com. Note by Christian.*)

2. *What Statutes are void.*

A statute cannot make it lawful for A. to commit adultery with the wife of B., for the law of God forbids it; but it may dissolve her marriage with B. and so enable her to marry A. (*City of London* v. *Wood*, 12 *Mod.* 688.)

Statute against law of God void.

As to what statutes are void by reason of defective parties to the framing of, and improper framing of, see *Bac. Ab. Statutes*, (*A.*)

Statutes void by improper framing of.

III. Of the Form and Parts of a Statute.

Formerly the bill, or proposed enactment, was in the nature of a petition, which was entered upon the parliament roll, and upon the roll the royal assent was likewise entered. Upon this groundwork the judges used at the end of the parliament to draw up the act of parliament into the form of a statute, which was afterwards entered upon the statute roll. Now, however, the statute in its perfect form is at once brought into the house. (*Dwarris on Stat.* 652.)

Form.

The established form for a statute is, "Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, that," &c.

The parts of a statute are in a popular, though not legal sense—the Title—the Preamble—the Purview or body of the Act—Clauses—Provisos—Exceptions—the Date.

Parts.

The title of a statute it has been repeatedly held is no part of the statute (*Barrington on Stat* 449, *notis*; *R.* v. *Williams*, 1 *W. Bl.* 85), for it is usually framed only by the clerk of that house in which the bill first passes. (3 *Rep.* 33, *Poulter's case.*)

Title.

But taken in connexion with what are acknowledged parts of the statute, the title where the intent is not plain may slightly assist in removing ambiguities, and for this purpose is occasionally referred to; thus in *R.* v. *Inhabs. of Gwennap*, *Grose*, J. said, "If we read the titles and preambles of the three acts (which are in *pari materiâ*) there can be no doubt." (5 *T. R.* 135; *see also R.* v. *Curtwright*, 4 *T. R.* 490; *R.* v. *Marks*, 3 *East*, 160; *Dw. on Stat.* 654.)

The preamble usually contains the motives and inducements to the making of it, but it has also been held to be no part of the statute. (6 *Mod.* 62; *Wills* v. *Wilkins*, 6 *Mod.* 144.)

Preamble.

The degree of influence which the preamble ought to have in expounding statutes will be treated of hereafter, when the rules for the construction of statutes are taken into consideration.

The preamble of an act of parliament, reciting that certain outrages had been committed in particular parts of the kingdom, was adjudged by the court of King's Bench to be admissible in evidence, for the purpose of proving an introductory averment in an information for a libel that outrages of that description had existed. (*R.* v. *Sutton*, 4 *M. & Sel.* 532.)

The true meaning of the statute is generally to be sought from the purview or body of the act.

Purview or body of the act.

The clauses contain the several enactments devised by the legislature for carrying out the general object of the act.

Clauses.

A saving in a statute is only an exception of a special thing out of the *general* things mentioned in a statute. (*Holliswell* v. *Bridgewater*, 2 *And.* 192.)

Saving.

A proviso is something engrafted upon a preceding enactment. (9 *B. & C.* 835.) The different effects of a repugnant proviso and repugnant saving clause will be found treated of hereafter (*post*, p. 1168).

Proviso.

3. *Of the Form and Parts of.*

Exception.

An exception is where, in the enacting clause itself of a statute, a particular case is exempted from its operation; and differs from a proviso in this, that where, in pleading, the enacting clause is set out or relied on, the exception must be expressly negatived, whereas what comes by way of proviso must be insisted on by the opposite party. (*Fost.* 430; 1 *East*, 644; *Burr.* 148; *Grand Junction Railway Company* v. *White*, 2 *Railway Cases*, 559.)

Date.

By the stat. 33 Geo. 3, c. 13, the indorsement by that act directed to be made by the clerk of the parliaments on every act, of the day, month, and year when the same shall have passed and shall have received the royal assent, shall be taken to be a part of such act, &c.

IV. Time when Statute begins to take Effect, and how long it continues in Force.

Time of taking effect.

Time when it begins to take effect.]—If an act of parliament had been brought in at the close of a session, and passed on the last day, which made an innocent act criminal, or even a capital crime, and if no day was fixed for the commencement of its operation, it had the same efficacy as if it had been passed on the first day of the session; and all who during a long session had been doing an act which at that time was legal and inoffensive, were liable to suffer the punishment prescribed by the statute. (4 *Inst.* 25; *Latless* v. *Holmes*, 4 *T. R.* 660; *and see Rumsey* v. *Tuffnell*, 2 *Bing.* 257; 9 *Moore*, 425; *Atty. Gen.* v. *Panter*, 6 *Bro. P. C.* 553.) But this absurdity was removed by the 33 Geo. III. c 13, by which it was enacted, that when the operation of an act of parliament is not directed to commence from any time specified within it, the clerk of the parliaments shall indorse upon it the day upon which it receives the royal assent, and that day shall be the date of its commencement.

Even the present rule operates with some degree of harshness; for a statute is to operate from the very day it passes, if the law itself does not appoint the time: thus persons in distant parts of the kingdom may be subjected to the operation of an act though it be impossible that they can have had notice of its existence, for it is an established maxim that ignorance of law will not excuse a crime (*see* 4 *Bla. Com.* 27); but ignorance of a law which is of very recent enactment will in some cases afford good reason for a pardon. Thus, where the prisoner was indicted for maliciously shooting a person, and the offence was committed within a few weeks after the passing of the 39 Geo. III. c. 37, and before notice of it could have reached the place where the offence was committed, the judges thought that, as he could not have known of the act, he ought to have a pardon. (*R.* v. *Bailey*, *R. & R.* 1.)

Ignorance of statute, how far an excuse for a crime.

Although in an act of parliament it is expressly enacted, that it shall commence and take effect from a day named, yet, if the royal assent be not obtained until a day subsequent, the provisions of a particular section in its terms prospective, do not take effect until such subsequent day. (*Burn* v. *Carvalho*, (*in error*,) 4 *Nev. & M.* 893; *but see R.* v. *Swiney*; *Alcock & Napier*, 131, Irish Reports.)

An act made to correct an error by omission in a former statute of the same session, relates back to the time when the first act passed, and must be taken together as if they were one and the same act. (*Att. Gen.* v. *Pougett*, 2 *Price*, 381.)

When retrospective.

It is in general true that no statute is to have a retrospect beyond the time of its commencement; for the rule and law of parliament is, that "*Novâ constitutio formam debet imponere non præteritis.*" (*Bac. Ab. Statutes, C*; *and see* 1 *Bla. Com.* 46; *Couch* v. *Jeffries*, *Burr.* 2460; *Wilkinson* v. *Meyer*, *Lord Raym.* 1350; *Fowler* v. *Chatterton*, 6 *Bingh.* 258; *Kirkhaugh* v. *Herbert*, *Id.* 265.)

Thus, before the day on which the Statute of Frauds took effect, (24 June,

1677,) a verbal promise was made to give or bequeath a sum of money in consideration of marriage. In an action against the executors the question was, whether this promise was within the 29 Car. II. c 3:—by the Court "It cannot be presumed that the statute was to have a restrospect so as to take away a right of action which the plaintiff was entitled to before the time of its commencement." (*Gilmore* v. *Shuter*, 2 *Lev.* 227; *see also*, *Ashburnham* v. *Bradshaw*, 2 *Atk.* 36; *Att. Gen.* v. *Lloyd*, 3 *Atk.* 541; *Att. Gen.* v. *Andrews*, 1 *Ves. Sen.* 225.)

4. Time when Statute begins to take Effect, and how long it continues in Force.

The 2 & 3 Vict. c. 29, s. 2, does not apply to a case where the assignees in bankruptcy were appointed before its passing. (*Moore* v. *Phillips*, 7 *M. & W.* 536; 9 *Dowl.* 294, *S. C.*)

But a statute *may* have a restrospect to a time antecedent to that of its commencement. (*Bac. Ab. Statutes, C.*)

In construing a statute made after the entering into a contract, the sense of the words ought not to be strained, so as to avoid the contract, to the benefit whereof some person was entitled at the time the statute was made. (*Wilkinson* v. *Meyer*, *Lord Raym.* 1352.)

Where by an act a duty is imposed, with a restrospective date depending on a fact which has taken place, and which is provided for by the alternative expressions "shall be," or "shall have been found," it seems that the duty attaches from such respective date. (*Hume* v. *Haig*, (*in error*,) 8 *Bro P. C.* 196.)

The annual Indemnity Act (4 Geo. IV. c. 1,) is prospective as well as retrospective. (*Re Steavenson*, 2 *B. & Cres.* 34.)

A statute authorising certain duties to be assessed and collected under the regulations of any act *to be* passed in the same session of parliament, for consolidating, &c., was held to speak the language of the legislature as from the commencement of and with reference to the whole session, and to relate to a prior act, with the title referred to, passed in the same session and indorsed accordingly with a prior date by virtue of the 33 Geo. III. c. 13. (*Nares* v. *Rowles*, 14 *East*, 510.)

"Act *to be* passed" may mean "act passed."

By the 48 Geo. III. c. 106, where any bill shall be introduced into any session of parliament, for the continuance of any act which would expire in such session, and such act shall have expired before the bill for continuing the same shall have received the royal assent, such continuing act shall be deemed to have effect from the date of the expiration of the act intended to be continued, except it shall be otherwise provided in such continuing act. But nothing herein contained shall extend to affect any person with any punishment, penalty, or forfeiture, by reason of anything done or omitted to be done contrary to the provisions of the act continued, between the expiration of the same and the date at which the act continuing the same shall receive the royal assent. (As to the repeal of a statute, and its effect, *see post*, 1173.)

48 Geo. III. c. 106.

How long a statute continues in force.] Some statutes are temporary, others are perpetual.

How long a statute continues in force.

A temporary statute continues in force, unless it be sooner repealed, until the time for which it is made expires: a perpetual one, until it is repealed. (*Bac. Ab. Statutes, D.*)

A temporary statute is sometimes made to continue in force after it has ceased to operate substantially, for the purpose of supporting prosecutions against those who have violated it during the term specified for its continuance. (*Id.*) *Ex. gr.* 29 Geo. III. c. 64; 33 Geo. III. c. 66, &c. &c.

Every statute for the continuance of which no time is limited, is perpetual, although it be not expressly declared so. (*Id.*)

If an act be to have continuance for three years, and from thence to the end of the next session of parliament, it shall continue to the end of a session which begins after the three years, though a session within three years continues several months or years after the three years. (1 *Vent.* 22.)

If a temporary act be continued, or an expired statute be revived by another statute, the law derives its force from the first act which is to be considered as in operation by means of this continuance or revival.

5. *Authority of Statutes.*

(*Dw. on Stat.* 671; *R.* v. *Morgan, Strange*, 1066; *Shipman* v. *Henbest*, 4 *T. R.* 109.)

If a temporary act be revived after it has expired, without a special provision reaching to the intermediate time, the intermediate time is lost. No proceedings can be pursued under a repealed or expired statute, though commenced before the repeal or expiration, unless by special exception. (*Dw. on Stat.* 671; *Miller's case*, 3 *Wils.* 420.)

V. Authority of Statutes.

Extent of authority.

A statute is the highest authority which this kingdom acknowledges on earth; (1 *Bla. Com.* 185;) it has power to bind every subject in the land and the dominions thereunto belonging, nay, even the king himself if particularly named therein. The limits of its authority can scarcely be defined. Whatever a government has power to enforce, the legislature has power to enact.

Binds to perform duties subsequently imposed.

Statutes often affect matters of subsequent creation, in like manner as an immemorial custom will embrace matters arising within the time of legal memory. (12 *Mod.* 485.) Thus the 35 Eliz. c. 5, s. 2, which requires a particular venue in penal actions, affects other penal actions since created. (*Barber* v. *Tilson*, 3 *M. & S.* 429.) And a bond given pursuant to 12 Geo. 2, c. 29, was held to bind defendant to performance of trusts imposed by subsequent acts of parliament. (*Farr* v. *Holles*, 9 *B. & C.* 315.)

When the queen is bound by.

If an act speaks of the king *indefiniti*, being named in his politic capacity, it extends to all his successors. (12 *Rep.* 110; *the case of Soldiers*, 6 *Rep.* 27 *a.*)

So, to a queen, if the crown descends to a female. (12 *Co.* 110.)

A statute beginning "*Rex perpendens*," &c. so "the king commandeth that no man shall disturb any electors to make free election," are instances where the king, being named, is bound. (*Dw. on Stat.* 669; 2 *Inst.* 31.)

And though the king be not expressly named, yet if there be equivalent words, or if the prerogative be included by necessary implication he will be bound. Thus by 7 Hen. IV. c. 4, it is provided that protection should not lie for a warden of a prison, in debt brought against him upon an escape. As none can grant protection but the king, this statute is held to bind the king. (*Dwar.* 669, *et not.*)

But, generally, the king shall not be restrained of a liberty or a right which he had before, by the general words of an act of parliament, if the king be not named in the act. (*Pl. Com.* 240; *Rex* v. *Cook*, 3 *T. R.* 521; *Case of Magdalen College*, 11 *Rep.* 66; *see R.* v. *Wright*, 1 *Ad. & Ell.* 437; 3 *Nev. & M.* 892.)

Yet, if a statute be intended to give a remedy against a wrong, the king, though not named, shall be bound by it: as by the 32 Hen. VIII. c. 28, to prevent a discontinuance by the husband of the lands of his wife during coverture. (2 *Inst.* 681.)

So, in all statutes made against wrong, to prevent fraud, or the decay of religion, the king is bound. (*Case of the Ecclesiastical Persons*, 5 *Rep.* 14 *b.*)

And therefore the king shall be bound by the statute Will. II. c. 1, *de donis.* (*Case of the Ecclesiastical Persons*, 5 *Rep.* 14 *b.*)

So, by the statute Will. II. c. 5, against tortious usurpations. (*Id.*)

So, by the statute of 31 Eliz. c. 6, against simony. (*Co. Litt.* 120 *a.*)

So, the king, though not named, is bound by acts for the advancement of religion, or of learning, or providing for the poor, as the act 10 Car. I., for uniting livings in Ireland. (*R.* v. *Archbishop of Armagh*; *Str.* 516.)

Clauses which limit in any way the right of the crown must be considered as repealed by subsequent statutes, unless expressly re-enacted. (*Att. Gen.* v. *Newman*, 1 *Price*, 438.)

A statute made for the benefit of the king shall be construed most beneficially for him: as the 17 Edw. II., *de Præn Regis*, which says, that the

king shall have the ward of his tenant seised in fee, extends to his tenant seised in tail. (*Pl. Com.* 11 *a.*)

6. *Things incidental to.*

When a statute creates a penalty, and says that one moiety shall be given to the use of the king, and the other to a common informer, the king may sue for the whole, unless a common informer has commenced a *qui-tam* suit for the penalty. (*R.* v. *Hymen*, 7 *T. R.* 536.)

VI. Things incidental to a Statute, and necessarily implied.

Where statute gives a right, the common law gives remedy.

Wherever an act of parliament gives a right, the common law gives a remedy. (*Ashby* v. *White*, *Salk.* 20. 21; *Ashby* v. *White*, 6 *Mod.* 54.)

And whenever a provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law. (1 *Inst.* 235; 2 *ed.* 222.)

Whenever a power is given by a statute, everything necessary to the making of it effectual is given by implication: for the maxim is, *Quando lex aliquid concedit concedere, videtur et id per quod devenitur ad illum.* (12. *Rep.* 130; 2 *Inst.* 306.)

It an offence be made felony by a statute, such statute does by necessary consequence subject the offender to the like attainder and forfeiture, and does require the like construction, as to those who shall be accounted accessaries before or after the fact, and to all other intents and purposes, as a felony at the common law does. (1 *Hawk. c.* 41, *s.* 4; 3 *Inst.* 47, 49, 50.)

Misprision of felony is as well incidental to a felony created by a statute as to one at the common law. (1 *H. H. P. C.* 652.)

Power to administer an oath.

In all cases where justices may take examinations, or other accusation or proof, though the statute doth not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. (*Dalt. c.* 115.)

In what case sessions may execute the power given to two justices.

Generally it is holden, that where a statute appoints a thing to be done by one or more justices without giving any appeal to the sessions, there the justices in sessions may do that thing; but where an appeal is given to the sessions, the justices in sessions cannot proceed originally therein, because that method would take away the power of appealing. (*See* "*Sessions.*" *ante*, p. 973.)

Power to convene the parties.

Where a statute gives power to the justices to require any person to do a thing, as to take the oaths, the law impliedly gives them power to issue their precept to have the body before them: for when the law granteth any thing to any one, that also is granted without which the thing itself cannot be; and it is against the office of the justices, and the authority given them by the law, that they shall go and seek the parties. (12 *Rep.* 130, 131; "*Justices,*" Vol. III. p. 1014.)

Necessity of summoning the party.

Where a statute gives power to the justices of the peace to hear and determine an offence in a summary way, it is necessarily implied and supposed, as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. (1 *Haw. c.* 64, *s.* 60; *R.* v. *Benn*, 6 *Term Rep.* 198; *Partier* v. *Liverpool Gas Company*, 3 *Ad. & Ellis*, 433.)

Two justices to be both together.

Where an act of parliament gives power to two justices finally to hear and determine an offence, it is necessarily supposed, that they shall be both together, or which is the same thing in other words, that they shall hold a special sessions for that purpose. And the like is, when they are to do any other judicial act, as to make an order of bastardy, or adjudge the settlement of a poor person. For it is unknown to the laws of England, that two persons shall act as judges in the same cause, when at the same time one of them is in one part of the country and the other in another. (*See* "*Justices,*" Vol. III. p. 1009.)

Informer's oath.

Where a statute appoints a conviction to be on the oath of one witness, this ought not to be by the single oath of the informer; for if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward. (*R.* v.

6. *Things incidental to.*

Stone, 2 *Ld. Raym.* 1545; 1 *Sess. Cas.* 378, *S. C.*; *see* "*Conviction*," Vol. I.; "*Evidence*," Vol. II. p. 435.)

Confession.

Where a statute directeth that a person shall be convicted of an offence upon the oath of one or more witnesses, and saith nothing of the confession of the party, yet if the offender shall before the justice confess the offence, he may be convicted upon such confession: for confession is stronger evidence than the oath of witnesses. (*Dalt.* 109, 162; *R.* v. *Gaye*, 1 *Str.* 546; *see* "*Conviction*," Vol. I.)

Discretionary power.

Where an act of parliament gives power to the justices of the peace to take order in any matter according to their discretions, this shall be understood according to the rules of reason, law, and justice, and not by private opinion. (5 *Rep.* 100; *see* 8 *Howell's St. Tri.* 55 (*notis*); and "*Justices*," Vol. III. p. 1011.)

England including Wales.

In all cases where the kingdom of England, or that part of Great Britain called England, hath been or shall be mentioned in any act of parliament, the same shall be deemed to comprehend the dominion of Wales, and town of Berwick-upon-Tweed. (20 Geo. II. c. 42, s. 3.)

Berwick.

Mitigating penalties.

Where a statute gives discretionary power of mitigating penalties, it is a general rule that there the legislature must be taken to have intended to place the matter under the jurisdiction of the justices of the peace. (*Per Abbott, C. J., Reeve* v. *Poole*, 4 *B. & C.* 156; *R.* v. *Rawlinson*, 6 *D. & R.* 26, *S. C.*) *See* "*Conviction*," Vol. I.

Twelve months.

It may be laid down as an invariable rule, that the law favours liberty: so that, in the construction of a penal statute, where the interpretation is dubious, that sense must be pursued (all other things being equal) which is more beneficial to the subject, or the party suffering. Thus, where an act directs that the justices shall commit an offender to prison for twelve months, the justices may not alter the words, and commit him for a year; for, in this respect, twelve months and one year are not the same: but the months must be computed at twenty-eight days to the month, and not as calendar months, unless it be so expressed in the act. (*See* "*Time*," Vol. VI.)

Quakers' affirmation.

In all cases wherein, by any act of parliament, an oath shall be allowed or required, the solemn affirmation of Quakers shall be allowed instead of such an oath, although no particular or express provision be made for that purpose in the said act. (22 Geo. II. c. 46, s. 3.) *See title* "*Oaths*," Vol. V. p. 252, 255.

Forfeiture.

To say that a person shall forfeit generally, or that he shall forfeit to the king, is all one; for the king shall have every forfeiture not otherwise limited. (*Foster's Case*, 11 *Rep.* 60.) Except where a forfeiture is given in lieu of property and interest; for there it shall go to the party injured. (1 *Roll. Rep.* 90.) For, wheresoever a statute giveth a forfeiture or penalty against him which wrongfully detaineth or dispossesseth another of his duty or interest, in that case, he that hath the wrong shall have the forfeiture or penalty, and shall have an action for the same upon the statute, and the king shall not have the forfeiture in that case. (1 *Inst.* 159.)

Single or several offences and penalties.

With regard to the recovery of several penalties against joint offenders, the rule seems to be that where an offence created or made penal by statute is in its nature single, one single penalty only can be recovered though several join in committing it; but if the offence is in its nature several, such offender is separately liable to the penalty. (*Cowp.* 610.) So, whether two penalties can be incurred on the same day will depend in like manner on the nature of the offence. Thus it was held, that only one penalty would be forfeited in one day, upon the 5 Anne, c. 14, s. 4, for keeping or using greyhounds for the destruction of Game (*Marriott* v. *Shaw*, *Com.* 274; *R.* v. *Mathews*, 10 *Mod.* 26.) But under 12 Geo. II. c. 36, against the sale of certain books, each distinct act of sale on the same day was held a distinct offence. (*Brooke* v. *Milliken*, 3 *T. R.* 509.) *See further*, *Reg.* v. *Dean*, 12 *Mees. & W.* 39, *t tle* "*Conviction*," Vol. I.

Fine and ransom.

Where a statute saith, that such a person shall pay fine and ransom to the king, in legal understanding such fine and ransom are all one: for,

if they were divers, then should the party pay two sums, one for the fine and another for the ransom, which was never done. (1 *Inst.* 127.)

6. *Things incidental to.*

Acts of parliament that speak of fines or ransoms at the king's pleasure, are always to be understood of the king in his courts by his justices. (1 *Hale*, 375.)

Power of commitment when implied.

It is said, that wheresoever a justice of the peace is empowered, by any statute, to bind a person over, or to cause him to do a certain thing, and such person, being in his presence, shall refuse to be bound or to do such thing, the justice may commit him to the gaol, to remain there till he shall comply. (2 *Haw. c.* 16, *s.* 2; *see* "*Commitment*," Vol. I. p. 775; "*Justices*," Vol. III. p. 1015.)

Imprisonment.

When a statute appoints imprisonment, but limits no time when, it shall be immediately. (*Bonham's case*, 8 *Rep.* 119.)

When a statute appoints imprisonment, but limits no time how long, the prisoner in such case must remain at the discretion of the court. (*Dalt.* 410.)

Where any offender shall, by a justice of the peace, be committed to the house of correction for an offence cognizable before him out of sessions, and the time and manner of punishment is not by law expressly limited, he may commit him to the house of correction, there to be kept to hard labour until the next general or quarter sessions, or until discharged by due course of law. (17 Geo. II. c. 5, s. 32.)

Statute making an offence felony.

Wherever a statute makes any offence felony, it incidentally gives it all the properties of felony at common law. (1 *Haw. c.* 38, *s.* 18.)

Misprision.

Therefore, an act of parliament that makes an offence felony, doth consequently introduce the punishment of concealing,—that is, misprision of felony; and every offence made felony by act of parliament includeth misprision. (1 *Hale*, 708.)

Infants.

An act making a new felony extendeth not to infants under fourteen years of age; but if they be of that age it binds them. (1 *Hale*, 706; *see* "*Children*," Vol. I.)

Life and member.

Not only those crimes which are made felonies by the express words of any statute, but also those which are decreed to have or undergo judgment of life and member, do become felonies thereby, whether the word felony were mentioned or not. (1 *Haw. c.* 40, *s.* 1.)

Body and goods.

But an offence shall never be made felony by the construction of any doubtful and ambiguous words of a statute; and, therefore, if it be only prohibited under pain of forfeiting body and goods, or of being at the king's will for body, lands and goods, it shall amount unto no more than a high misdemeanor, punishable by imprisonment or the like. (*Id. s.* 2.)

Forfeiture of dower.

Saving of dower in a statute making an offence felony, is superfluous; for, by the 1 Edw. VI. c. 12, s. 17, dower is not lost by the felony of the husband.

Costs.

Where any complaint shall be made before a justice, and a warrant or summons shall issue in consequence thereof, the justice, upon hearing and determining the matter, may award costs to either party; but if the conviction be upon a penal statute, and the penalty amounts to 5*l.* or upwards, the costs shall be deducted out of the penalty. (18 Geo. III. c. 19; *see* "*Costs*," "*Conviction*," Vol. I.) Acts giving costs should in general be construed strictly. (*See, post*, 1173.)

Damages.

Upon an indictment or other criminal prosecution, no damages can be given to the party grieved; but it is every day's practice in the court of Queen's Bench to induce defendants to make satisfaction to the prosecutors, by intimating an inclination on that account to mitigate the fine due to the king. (2 *Haw. c.* 25, *s.* 3; *see* further, "*Justices*," Vol. III. p. 1015; "*Conviction*," Vol. I.

Treble damages.

Where a statute gives treble damages, the justices are not to assess the damages, and then treble them; but the jury ought to find the damages, and then the justices are to treble them. (*Bumpstead's case, Cro. Car.* 449; "*Justices*," Vol. III. p. 1016.)

Distress and sale.

In all cases where a justice is required by an act of parliament to issue

6. *Things incidental to.*

a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such act, it shall be lawful for such justice granting the warrant, therein to order and direct the goods distrained to be sold within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless such penalty or sum of money, together with the reasonable charges of taking and keeping the distress, be sooner repaid. And the officer making such distress may deduct the reasonable charges of taking, keeping, and selling the said distress: and the overplus, if any, shall be returned to the owner on demand. Except only in cases of distress for Quakers' tithes and church-rates. (27 Geo. II. c. 20; *see "Distress under Justices' Warrant,"* Vol. II. p. 325.)

Second offence.

An act inflicting a penalty for a second offence must always be understood, after conviction and judgment for the first offence; and the second offence must be committed after the first conviction, and judgment thereupon given; for it doth not appear to be an offence, until judgment by proceeding of law be given against the offender. (2 *Inst.* 468.)

And the indictment for a second offence must recite the record of the first conviction; and, upon the evidence, the record of the first conviction must be proved: but the matter of the first conviction shall never be re-examined, but must stand for granted. (1 *Hale*, 686.)

Expence of jury.

A private act which provides for the expence of maintaining a jury does not extend to a dinner given to them at a tavern after they had delivered their verdict. (*Forster* v. *Taylor*, 3 *Camp.* 49.)

Forms given by statute.

As to how far the forms prescribed by a statute must be followed, see, fully, "*Conviction,*" Vol. I.

If a particular form of a notice or order be prescribed by a private act of parliament, it must be fully set out and precisely pursued; and an allegation that due notice was given is not sufficient. (*R.* v. *Croker*, *Coup.* 30.)

And a defective notice, under a private act of parliament, is not cured by the appearance of the party. (*Id.*)

Clauses of limitation of proceedings under.

As to the construction of clauses limiting the time for bringing actions, &c., for prosecutions, &c., under the act, or for acts done under it, see "*Conviction,*" Vol. I.; "*Justices,*" Vol. III. p. 1039; "*Time,*" Vol. VI.

Limitation of prosecution on penal statutes.

All actions, indictments, or informations, on penal statutes, for any forfeiture limited to the king, shall be brought within two years after the offence committed; if limited to the king and prosecutor, then within one year; and if it is not sued for in that one year, then the king may sue for the same within two years after the expiration of that one year, and not otherwise. (31 Eliz. c. 5, s. 5.) That is to say, unless where it is otherwise specially directed by subsequent statutes. (*See "Information,"* Vol. III. p. 916.)

Wherever a statute imposes terms and prescribes a thing to be done within a certain time, the lapse of a day is fatal, even in a penal case, because no inferior court can admit of any terms but such as directly and precisely satisfy the law. (*Farrell* v. *Tomlinson*, 5 *Bro. P. C.* 438; *Bonham's case*, 8 *Rep.* 119.)

Act indemnifying persons acting under it.

It has uniformly been held, that where a party *bonâ fide* believes or supposes he is acting in pursuance of an act of parliament, and there is reasonable ground to justify him in such belief, he is within the protection of its clauses. (See the various decisions collected under the title "*Justices,*" Vol. III. p. 1033.)

Where an act gives certain privileges to officers who may be sued for things done in pursuance thereof, and a subsequent act imposes new obligations, the privileges given by the former act do not attach upon things done in pursuance of the latter. (*Bazing* v. *Skelton*, 5 *T. R.* 16.)

VII. Construction of Statutes.

7. *Construction of.*

Construction of statutes.

We have already, in the preceding section, while treating of some of those things which are incidental to a statute, and necessarily implied, noticed some rules for the construction of the same,

Nothing ought to be considered so necessary to the due administration of the office of justices of the peace as a thorough acquaintance with the mode of construing statutes, since by far the greater portion of his jurisdiction depends upon them.

Abridgments should never in any instance, be relied on in the construction of a statute. The statute itself should be consulted. For, according to Lord *Coke*, the best exposition of all acts of parliament are the acts of parliament themselves: "*optima statuti interpretatrix est* (*omnibus particulis ejusdem inspectis*) *ipsum statutum;*" and *injustum est nisi tota lege inspecta, una aliqua ejus particula proposita judicare vel respondere.*"

The following are the most prominent rules and principles by which statutes are to be construed.

Construction must be according to words and intent of act.

All acts of parliament, as well private as general, shall be taken by a reasonable construction to be collected out of the words of the acts themselves, according to the true intent and meaning of the makers of the act. (*Ld. Mountjoy's case, 5th Reports; Case of the Chancellor of the University of Oxford,* 10 *Rep.* 57, *b.*; *Com. Dig. Parliament, R.* 10.) Therefore, if a corporation be misnamed, if it appear that it was intended, it is sufficient. (*Case of the Chancellor of the University of Oxford,* 10 *Rep.* 57, *b.*; *Com. Dig. Parliament, R.* 10.)

The rule for the construction of a statute, as given by *Bac. Abr. Statutes* (I.) 6. (from *Plowd.* 467), is to suppose the law-maker present, and to be asked what he intended, and then to give such an answer as he, being an upright and reasonable man, might have been expected to give.

When the ordinary sense to be regarded or not.

Provisions in acts of parliament, according to the ordinary sense of the words, unless such construction would lead to some unreasonable result, or be inconsistent with or contrary to the declared or implied intention of the framer of the law, in which case the grammatical sense of the words may be extended or modified; instances of which are to be found in *Eyston* v. *Studd, Plowd.* 463; *Bac. Ab. Statutes* (I.), *per curiam,* in *R.* v. *Pease,* 4 *B. & Ad.* 40.

Construction to be according to common law.

When the provision of a statute is general, it is subject to the control and order of the common law, and it should be construed accordingly, for statutes are not presumed to make any alteration in the common law, further or otherwise than the act expressly declares; therefore, in all general matters, the law presumes the act did not intend to make any alteration, for if the Parliament had that design, they would have expressed it in the act. (*Harbert's case,* 3 *Rep.* 116; also, *R.* v. *Bishop of London,* 1 *Shaw,* 455; *Hard.* 62; *Arthur* v. *Boxenham,* 11 *Mod.* 150.)

If in the same act of parliament there be one clause which applies to a particular case, and another which is conceived in general terms, the former shall not restrain the signification of the latter. (*Per Buller, J., Andree* v. *Fletcher,* 2 *T. R.* 164.)

But where a general intention is expressed, and the act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception. (*Per Best. C. J., Churchill* v. *Crease,* 5 *Bing.* 180; 2 *Moor, & P.* 415; *R.* v. *Bishop of Armagh,* 8 *Mod.* 8; *and see Bac. Ab. Statutes* (I.).)

Usage to explain.

Where the words of a statute are doubtful, *general* usage may be called in to explain them; for *jus et norma loquendi,* is governed by usage; but, where they are clear, the usage of a particular place cannot controul them. (*R.* v. *Hogg,* 1 *T. R.* 728; *Vaughan,* 169; *Bac. Ab. Statutes* (I.).) The usage of any particular place alone cannot do so. (*Id. Cald.* 266, *S. C.*)

Where a statute, expressive as to some points, is silent as to others, usage may well supply the defect, if not inconsistent with express di-

7. *Construction of.*

rections of the statute. (*Magistrates of Dunbar* v. *Duchess of Roxburghe*, 3 *Cl. & Fin.* 335.)

If a word have a certain definite sense at common law, it shall be interpreted in that sense when used in a stat. (6 *Mod.* 143; 2 *Inst.* 736.)

Technical words.

If terms of art are used they are to be taken in their technical sense. Thus the expression "heirs of the body," conveys to a lawyer a precise idea as comprising in a legal sense only certain lineal descendants. (*Dw. on Stat.* 702.)

Whole act to be considered.

In construing acts of parliament, the court must take into consideration not only the language of the preamble, or of any particular clause, but of the whole act; and if in some of the enacting clauses expressions are found of more extensive import than in others, the court will give effect to those more extensive expressions, if, upon view of the whole act, it appears to have been the intention of the legislature that they should have effect. (*Doe* v. *Brandling*, 7 *B. & C.* 643; 1 *M. & R.* 600, *S. C.*; *Lincoln College case*, 3 *Rep.* 58.)

Should be construed like a will.

No strained construction should be placed upon a statute: it should be construed like a will. (*Butler and Baker's case*, 3 *Rep.* 25.)

Statute not always to be construed literally.

Too much stress ought not to be laid on the literal meaning of a statute. Wherever it admits of two constructions, the spirit of it, and intent of the legislature, ought to be regarded in the construction thereof. Thus, the 13 Geo. III. c. 84, s. 34, provides, amongst other exemptions from toll, "or for any horses or carriages which shall only *cross* any turnpike road, and shall not pass above one hundred yards thereon." A question arose, whether a carriage, which did not *cross* the road, but quitted it again on the same side on which it entered, was not liable to toll, although it did not pass the one hundred yards. The court held that it was not liable, observing, that the statute *meant* to exempt carriages making a very slight use of the road. (*Major* v. *Oxenham*, 5 *Taunt.* 340; *ante*, Vol. III. p. 726; *see R.* v. *Morris*, 1 *B. & Ad.* 141.)

Doubtful words to be construed with reference to object of act.

Doubtful words should be construed with reference to the object and intentions of the act. (*See Jordine* v. *Lewis*, 9 *B. & C.* 548; *R.* v. *Hall*, 1 *B. & C.* 123 2 *D. & R.* 241, *S. C.*; *and see, per curi.*, *R.* v. *Pease*, 4 *B. & Ad.* 40.)

It has more than once been observed by the court, that the language of acts of parliament is not to be examined with a critical eye, but according to its plain and obvious meaning. If we can find expressions in a statute capable of an intelligible explanation, it is our duty to give effect to them, according to the obvious intention of the legislature, and not according to a critical and literal interpretation. (*Per Abbot, C. J.*, *R* v. *Bellamy*, 2 *D. & R.* 727; 1 *B. & C.* 500, *S. C.*)

Where the legislature, in a very modern act of parliament, have used words of a plain and definite import, it is very dangerous to put upon them a construction, the effect of which will be to hold that the legislature did not mean that which they have expressed. (*Per Bayley, J.*, *R.* v. *Stoke Damerel*, 7 *B. & C.* 563; 1 *M. & R.* 458, *S. C.*)

Different parts so construed as if possible to stand.

One part of a statute must be so construed by another, that the whole may (if possible) stand: *ut res magis valeat, quam pereat.* But a saving, totally repugnant to the body of the act, is void. If, therefore, an act of parliament vests land in the king and his heirs, saving the right of all persons whatsoever; or vests the land of A. in the king, saving the right of A.; in either of these cases the saving is totally repugnant to the body of the statute, and (if good) would render the statute of no effect or operation; and, therefore, the saving is void, and the land vests absolutely in the king. (*The Case of Alton Woods*, 1 *Rep.* 47; 1 *Bla. Com.* 81.)

A saving, totally repugnant, void.

Repugnant proviso.

But it has been held, that a repugnant proviso is not void, but shall stand and be held a repeal of the purview, because it is said, it speaks the last intention of the lawgiver. (*Att. Gen.* v. *Chelsea Waterworks*, *Fitzg.* 195; *Bac. Ab. Stat.*)

Saving clause.

A saving clause will only save that which is in *esse* at the time of the saving. (*Case of Alton Woods*, 1 *Rep.* 40, *b.*)

The title of a statute is no part of the law. (*R.* v. *Williams*, 1 *W. Bla.* 7. *Construction of.* 95.) But it may, it seems, be referred to in construing the statute. (*Sc. Free* v. *Burgoyne*, 5 *B. & Cres.* 400; 2 *Bligh. Rep.* 78, *N. S.*; *R.* v. *Pierce*, 3 *M. & Sel.* 62; *Mayor of Liecester* v. *Burgess*, 5 *B. & Adol.* 250; 2 *Nev. & M.* 131, *S. C.*; *sed vide Bac. Ab. Statutes* (I.); *Hard.* 324; *Lord Raym.* 77.)

Title of act.

The preamble is deemed true, and is a good means for collecting the intent, and may always *assist* in the solution of doubts. (*Crespigny* v. *Witternoon*, 4 *T. R.* 723; 1 *Inst* 11; *Bac. Ab. Statutes* (I.).) But the preamble shall not restrain the operation of the enacting part of a statute which is expressed in clear and unambiguous words: as, where the preamble reciteth only a particular inconvenience, this shall not hinder a subsequent enacting clause from being understood in that more general sense which the words would otherwise and of themselves import, so as to take in other inconveniences of the like kind, although not specified in the preamble. (*R.* v. *Athos*, 8 *Mod.* 144; 1 *P. Wms.* 320; *Lofft*, 782; *Patterson* v. *Bankes*, *Cowp.* 543; *Perkins* v. *Sewell*, 1 *Bla. Rep.* 659; *Wright* v. *Nuttall*, 10 *B. & C.* 492. See the rule laid down in 7 *B. & C.* 643, *ante*, 1168.)

The preamble to be considered.

The enacting words of a statute may be carried beyond the mischief recited in the preamble, if such, upon a fair exposition of the statute, appear to have been the intention, and the words are sufficiently large. (*R.* v. *Pierce*, 3 *M. & Sel.* 62; *and see Hatton* v. *Cove*, 1 *B. & Adolph.* 538.)

All statutes in *pari materiâ* are to be construed as one law; (*Earl of Ailesbury* v. *Pattison*, 1 *Dougl.* 30; *Jones* v. *Smart*, 1 *T. R.* 53; *R.* v. *Inhabitants of Gwenop*, 3 *T. R.* 135;) and should be construed together. (2 *Lofft*, 398; *R.* v. *Conservators of River Tone*, 1 *B. & Adolph.* 561; 4 *M. & Sel.* 210: *Bac. Ab. Statutes* (I.).)

Statutes in *pari materiâ*.

As if one statute prohibit the doing of a thing, and another statute afterwards be made whereby a forfeiture is inflicted upon the person doing that thing, both are to be considered as one statute. (*Stradling* v. *Morgan*, *Plowd.* 206.)

If it can be gathered from a subsequent statute *in pari materiâ* what meaning the legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. (*Morris* v. *Mellin*, 6 *Barn. & C.* 454; 9 *D. & R.* 503, *S. C.*; *and see* 5 *B. & C.* 162; *and King* v. *Smith*, 4 *T. R.* 419.)

As to when a statute may be considered as an appendix to another act, *see Lane* v. *Bennett*, 1 *M. & Wels.* 72.

The construction of private acts of parliament is to be governed by the principles of common law, and applied to the subject in a manner analogous to the rules of interpretation in a private deed or conveyance. (*Eton College* v. *Winchester (Bishop)*, *Lofft*, 401.)

Private statutes

They ought not to have a liberal construction put on them. (*Threadneedle* v. *Lynam*, 2 *Mod.* 57; *Bac. Ab Statutes* (I.).)

A statute made *pro bono publico*, shall be construed in such manner that it may as far as possible attain the end proposed. (*Pierce* v. *Hopper*, 1 *Stra.* 253, 258.) For which reason the *New River* water act was holden, although only the city of London be therein mentioned, to extend to places adjacent. (*New River Company* v. *Graves*, 2 *Vern.* 431; *and see R.* v. *Pease*, 1 *Nev. & M.* 690; 4 *B. & Adol.* 37, *S. C.*)

Statutes for public good to be construed liberally.

There are three points to be considered in the construction of all *remedial statutes*; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy, consistently with the fair construction of the act. (*Heydon's case*, 3 *Rep.* 7; *Co. Lit.* 11, 42, 1 *Bla. Com.* 81; *Johnes* v. *Johnes*, 3 *Dow*, 15; *Atcheson* v. *Everitt*, *Cowp.* 391, *S. P.*; *Stainford* v. *Sinclair*, 9 *Moore*, 379; 2 *Bing.* 193, *S. C.*; *R.* v. *Hodnett*, 1 *T. R.* 96, 313.)

Remedial statutes to be construed liberally.

7. Construction of.

All cases within the same mischief.

So, in all cases within the same mischief, the case shall be construed within the intent though it be not within the letter of the statute. (*Com. Dig. Parliament, R.* 13; *St. Peter's, York,* (*Dean and Chapter*) v. *Middleborough,* 2 *Y. & J.* 196.)

Thus it has been laid down that a statute may be extended by construction to *other cases* within the same mischief and occasion of the act, though not expressly within the same words. The statute, *Marlb.* 29, which gives remedy to the successor, *ad bonæ ecclesiæ repetenda,* extends to trespass for cutting down trees. (2 *Inst.* 152.) (For other instances see *Winchester's case,* 3 *Rep.* 4; 2 *Inst.* 111. *Bro. Parl. Pl.* 20.)

Or a statute may extend to other *persons* besides those expressly named —thus the stat. of *circumspecte agatis,* which names only the Bishop of Norwich, has been always extended to other bishops. (*Dw. on Stat.* 721; *see also Plow.* 36; *Porter's case,* 1 *Rep.* 25; *Eyston* v. *Studd. Plow.* 467.)

Or to other *things*—thus uses were not within the stat. *de donis,* but are taken within the equity. (*Corbet's case,* 1 *Rep.* 88.)

Or to other *places.* (*See Ratcliffe's case,* 3 *Rep.* 39, *and Boyton's case,* 3 *Rep.* 44.)

Or a stat. may be extended to a time not mentioned—thus the stat. of West. 2, c. 11, limits no time within which the accountant shall be imprisoned, yet it ought to be done *presently.* (27 H. VI., 8 a.; *Dw. on Stat.* 223.)

So, a remedial stat. may extend to later provisions by subsequent statutes: thus a devise to a woman of land for term of her life or in tail, for her jointure and in satisfaction of dower, is a jointure within 27 Hen. VIII., although land was not devisable till 32 Hen. VIII. (*Dw. on Stat.* 724, *and see Vernon's case,* 4 *Rep.* 4.)

The 2 Geo. II. c. 22, continued by the 29 Geo. II. c. 28, expired 1st June, 1759; the 32 Geo. II. c. 28, commenced 15th June, 1759; so there was a chasm of fourteen days. The court declared they would construe equitably, and that Trinity term, 1759, ought to be considered as the term in which such prisoners (as had been precluded by the expiration of the former act from completing their discharge under it) were charged in execution, and therefore they had *Michaelmas* term for the first term next after their being charged in execution. (2 *B. M.* 901.)

If reason of law general it shall receive a general acceptation.

And if the reason of the law be general though the provision is special, the words of the statute shall receive a general acceptation: thus the 5 Hen. IV that none be imprisoned by any justice of the peace but in the common gaol, to the end that they might have their trial at the next gaol delivery or sessions of the peace, has been thought to extend to all other judges and justices. (2 *Inst.* 33.)

But of late years an increasing inclination has been manifested to adhere more closely in the construction of statutes to the words of the act of parliament: and the result of modern decisions seems to be, that to bring a case within the statute, it should be not only within the mischief contemplated by the legislature, but also within the plain intelligible import of the act of parliament. (*Dw. on Stat.* 711; *R.* v. *Turvey,* 2 *B. & A.* 522; *Brandling* v. *Barrington,* 6 *B. & C.* 467; *Ex pte. Swift,* 3 *Dow.* 636.)

Casus omissus.

A *casus omissus* can in no case be supplied by a court of law; for that would be to make laws. (*Per Buller, J., Jones* v. *Smart,* 1 *T. R.* 52.)

A case out of the mischief provided against.

A case out of the mischief intended to be remedied by a statute shall be construed to be out of the purview, though it be within the words of the statute. (2 *Inst.* 386.)

But where the words of a statute go beyond the intention, it rests with the legislature to make an alteration. The duty of the court is only to construe and give effect to the provision. (*Nolley* v. *Buck,* 8 *B. & C.* 164.) "It is safer," said Mr. J. *Ashurst,* in *Jones* v. *Smart,* 1 T. R. 52, "to adopt what the legislature has actually said, than to suppose what they meant to say."

An act ought not to be construed so as to work an injustice. (*Sir J. Nedham's case.* 8 *Rep.* 136 *a;* *Towler* v. *Chatterton,* 6 *Bing.* 259; 3 *M. & P.* 619, *S. C.*)

No statute shall be construed in such a manner as to be inconvenient and against reason. (*Hughes* v. *Hughes, Carth.* 136; 1 *Inst* 97.)

7. *Construction of.*

Not to be construed against reason.

By the 12 Car. II. c. 17, all persons presented to benefices in the late times, who should conform as in the statute was directed, were to be confirmed therein, *notwithstanding any act or thing whatsoever:* yet it was holden, that the statute did not extend to the confirming of a person, who had been simoniacally promoted. (*Crawley* v. *Phillips, Sid.* 232.)

Penal statutes construed strictly.

Penal Statutes must be construed strictly. Thus, the 1 Edw. VI. c. 12, having enacted that those who are convicted of stealing *horses* should not have the benefit of clergy, the judges conceived that this should not extend to him that should steal but one *horse* (*a*), and therefore procured a new act for that purpose in the following year, 2 & 3 Edw. VI. c. 33. (*Bac. Elem.* c. 12.) And by the 14 Geo. II. c. 6, stealing sheep *or other cattle* was made felony, without benefit of clergy. But these general words, "or other cattle," being looked upon as much too loose to create a capital offence, the act was held to extend to nothing but mere sheep. And therefore, in the next sessions, it was found necessary to make another statute, 15 Geo. II. c. 34, extending the former to bulls, cows, oxen, steers, bullocks, heifers, calves, and lambs, by name. And see now the 7 & 8 Geo. IV. c. 29. It has since been decided, that where statutes use the plural number, a single instance will be comprehended. The 2 Geo. II. c. 25, enacts, that it shall be felony to steal any bank-notes, and it has been determined that the offence is complete by stealing *one* bank-note. (*Hassel's case, Leach's Cr. L.*)

The statute against maintenance shall be construed strictly. (*Com. Dig. Parliament, R.* 20, 86 *b.*)

The statute *de malefactoribus in parcis* was held not to extend to those in forests. (*Id.*)

So, the general words of a penal statute shall be restrained for the benefit of him against whom the penalty is inflicted.

As the stat. Will. II. 11, that the body of an accountant shall be committed by the auditors to gaol, without saying at what time; but he cannot be committed by them, if it be not immediately upon the account. (*Pl. Com.* 17 *a.*)

So, where the 12 Geo. II. c. 34, s. 2, directs that the sheriff should proclaim the order in council against offenders under that act, in two market towns, *near* the place where such offence was committed, the word *near* shall be taken to mean a reasonable vicinity, though not equivalent to *next.* (*R.* v. *Harvey,* 1 *Wils.* 164; 1 *Bl.* 20, *S. C.*)

But exposition ought not to be such as to elude the act.

But the exposition of a penal statute ought to be such, that the statute be not eluded. (2 *Rol.* 127; *Com. Dig. Parliament, R.* 28; *and see Bac. Ab. Statutes* (J.).)

Yet penal statutes are taken strictly and literally only in the point of defining and setting down the *fact* and the *punishment,* and not generally "in words that are but circumstances and conveyances in the putting of the case." (*Dw. on Stat.* 736.)

Statute introducing capital punishment.

Every statute which introduces a capital punishment must be construed strictly. (*R.* v. *Harvey,* 1 *Wils.* 164.)

(*a*) Lord *Hale* thinks that the scruple of the judges did not merely depend upon the words being in the plural number, because no doubt had ever occurred respecting former statutes in the plural number; as, for instance, it was enacted by the 32 Hen. VIII. c. 1, that no person convicted of burning *any dwelling-houses* should be admitted to clergy. But the reason of the difficulty in the case was, because the statute of 37 Hen. VIII. c. 8, was expressly penned in the singular number, *If any man do steal any horse, mare, or filly;* and then this statute, thus varying the number, and at the same time expressly repealing all other exclusions of clergy introduced since the beginning of Hen. VIII., it raised a doubt whether it were not intended by the legislature to restore clergy where only one horse was stolen. (2 *H. P C.* 365.)

7. Construction of.

Revenue and stamp acts.

Revenue and stamp acts are to be construed strictly. (*Per Lord Tenterden*, in *Tompkins* v. *Ashby*, 6 *B. & Cres.* 541; *and see Hubbard* v. *Johnson*, 3 *Taunt.* 220.)

Exemption from duties.

Statutes under which parties are made exempt from duties imposed by general acts should be construed strictly. (*Perchard* v. *Heywood*, 8 *T. R.* 468.)

Statute against common rights.

A statute imposing a charge on the public must be construed strictly. And where a special authority is delegated, by statute, to particular persons to take away a man's property and estate against his will, there it must be strictly pursued, and must appear to be so upon the face of the proceedings (*R.* v. *Croke*, *Cowp.* 26.) And such an act must be construed strongly against the parties to whom that authority is given, and in favour of private property. (*Scales* v. *Pickering*, 4 *Bingh.* 448; 1 *Moore & P.* 195; *and see Dudley Canal Company* v. *Grazebrook*, 1 *B. & Adol.* 59.)

An enlarged construction must not be put thereon. (*Lofft*, 435; *Hull Dock Company* v. *La March*, 8 *B. & Cres.* 52; 2 *Man. & R.* 107; *Stowbridge Can. Comp.*, 2 *B. & Adol.* 792; *Fraser* v. *Swansea Can. Comp.*, 3 *Nev. & M.* 391; 1 *Ad. & Ell.* 354, *S. C.*)

By an act reciting that a railway between certain points would be of great public utility, and would materially assist the agricultural interest and the general traffic of the country, power was given to a company to make such railway according to a plan deposited with the clerk of the peace, from which they were not to deviate more than 100 yards. By a subsequent act the company, or persons authorized by them, were empowered to use locomotive engines upon the railway. The railway was made parallel and adjacent to an ancient highway, and in some places came within five yards of it. It did not appear whether or not the line could have been made in those instances to pass at a greater distance. The locomotive engines on the railway frightened the horses of persons using the highway as a carriage road. On indictment against the company for a nuisance, it was held, that this interference with the rights of the public must be taken to have been contemplated and sanctioned by the legislature, since the words of the statute authorizing the use of the engines were unqualified, and the public benefit derived from the railway (whether it would have excused the alleged nuisance at common law or not) showed at least that there was nothing unreasonable in a clause of an act of parliament giving such unqualified authority. (*R.* v. *Pease*, 1 *Nev. & M.* 690; 4 *B. & Adolph.* 30, *S. C.*)

In railway acts, the clauses imposing tolls or duties, if there be any ambiguity therein, are to be construed most strongly against the company and in favour of the public. (*Stockton and Darlington Railway Company* v. *Barret* (*in error*), 3 *Scott, N. R.* 803; 2 *Railw. Cas.* 166 (*affirming judgment of C. P.*); 2 *Railw. Cas.* 443.)

An act of parliament, authorizing persons to repair and cleanse a navigable river, does not authorize them to make a passage to a new wharf on the river (*Poathwicke* v. *Mason*, 2 *Chit.* 658; *see R.* v. *Morris*, 1 *B. & Adol.* 441.)

If an act of parliament gives to the lord of a manor the conusance of all pleas within his manor, he shall not have conusance where he himself is party; *iniquum est aliquam suæ rei esse judicem.* (*Bonham's case*, 8 *Coke*, 118, *a.*)

Statutes against frauds construed liberally.

Statutes against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the rule, that penal statutes should be construed strictly; most statutes against frauds being in their consequences penal. But this difference is here to be taken: where the statute acts upon the offender, and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly; but when the statute acts upon the offence, by setting aside the fraudulent transaction, here it is to be construed liberally. Upon this footing the statute of 13 Eliz. c. 5, which avoids all gifts of goods, &c. made to defraud creditors *and others*, was held to extend by the

general words to a gift made to defraud the queen of a forfeiture. (*Twynne's case*, 3 *Rep.* 81.)

7. *Construction of.*

And it has been held that the same words in a statute will bear different interpretations, according to the nature of the suit or prosecution instituted upon them. As, by the 9 Anne, c. 14, the statute against gaming, if any person shall lose at any time or sitting 10*l.*, and shall pay it to the winner, he may recover it back within three months; and if the loser does not, within that time, any other person may sue for it, and treble the value besides. So where an action was brought to recover back fourteen guineas, which had been won and paid after a continuance at play, except an interruption during dinner, the court held the statute was remedial, as far as it prevented the effects of gaming, without inflicting a penalty, and therefore, in this action, they considered it one time or sitting; but they said, if an action had been brought by a common informer for the penalty, they would have construed it strictly in favour of the defendant, and would have held that the money had been lost at two sittings. (*Bones* v. *Booth*, 2 *Bla Rep.* 1226.)

Against customs.

Affirmative words in a statute do not take away a former custom. (*Co. Litt.* 115, *a*; *Com. Dig. Parliament*, R. 24.) The statute 11 Geo. IV. & 1 Wil. IV. c. 64, for permitting the general sale of beer by retail in England, does not supersede the custom of a borough, that no person shall carry on the trade of an alehouse-keeper therein who is not a burgess. (*Mayor, Bailiffs, and Burgesses of the borough of Leicester* v. *Burgess*, 2 *Nev. & M.* 131; 5 *B. & Adol.* 246; *and see Simson* v. *Moss*, 2 *B. & Adol.* 543.)

Against common law rights.

Statutes restrictive of the common law should receive a restrictive construction. (*Ash* v. *Abdy*, 3 *Swanst.* 664.)

But if a statute be only declaratory of the common law, it shall extend to others besides the persons or things named: thus where the Q. B. only is mentioned, the provision was held to extend to the other principal courts. (*Dw. on Stat.* 713; 2 *Inst.* 256.)

But in general the rule, *expressio unius est exclusio alterius*, holds good: thus where coal mines were made rateable by the express words of 43 Eliz. c. 2, it was held that all other mines were excluded. (*R.* v. *Cunningham*, 5 *East*, 478.)

Giving away property of subject—as the insolvent act.

It has been holden that a statute discharging insolvent debtors ought to be construed strictly, because it gives away the property of some subject. Et per *Holt*, C. J., "Let a statute be ever so charitable, if it give away the property of a subject, it ought to be construed strictly." (*Cailaday* v. *Pilkington*, 12 *Mod.* 513.)

A statute shall never have an equitable construction in order to overthrow an estate. (*Wroth* v. *the Countess of Sussex*, 3 *Leon*, 133.)

Statutes giving costs.

All statutes that give costs are to be taken strictly. (*Cone* v. *Bowles*, 1 *Salk* 205; *R.* v. *Glastonby*, *C. T. Hardw.* 357, *and see R.* v. *York* (*Justices of*), 3 *Nev. & M.* 685; 1 *Ad. & Ell.* 828, *S. C.*; *Bac. Ab. Statutes* (I.).

Registry acts.

The ship registry acts, so far as they apply to defeat titles and to create forfeitures, are to be construed strictly as penal, and not liberally as remedial laws. (*Hubbard* v. *Johnston*, 3 *Taunt.* 177.)

Creating new jurisdiction.

A statute creating a new jurisdiction ought to be construed strictly. (*Reeve* v. *Hopper*, *Stra.* 258, 260; 10 *Rep.* 73.)

It has therefore been holden, that the 6 Geo. I. c. 21, which gives the commissioners of excise a jurisdiction to condemn in a summary way certain goods therein mentioned, ought to be construed strictly; because it breaks in upon the ancient jurisdiction of the court of Exchequer. (*Warwick* v. *White*, *Bunb.* 106.)

Special power to one person only to be pursued.

Regularly, where an act of parliament giveth a power or interest to one person certain, by this express designation of one, all others are excluded. (11 *Rep.* 59, 64.)

Special authority.

Where persons, as justices, commissioners, &c., have special authority by statute, they have none but what is under such statute, all other acts being void. (*R.* v. *Lindale*, 1 *Burr.* 445.)

7. Construction of.

If it be doubtful whether a statute declaring an act, instrument, or contract, void, makes it voidable only, another clause in the same statute, imposing a penalty on such act, instrument, or contract, is a clear test that it is, *ipso facto*, void. (*Gye* v. *Felton*, 4 *Taunt.* 876.)

Where statute makes an instrument void.

When good in part, though bad in rest.

Where a clause void by statute law is mixed up with good matter, entirely independent of it, the good part stands, the rest is void. (*Horn* v. *Synge*, 15 *East*, 440.)

But if the part which is good depends upon that which is bad, the whole instrument is void. (*Biddell* v. *Leeder*, 1 *B. & C.* 327; 2 *D. & R.* 449, *S. C.*)

But this rule does not apply to different and independent covenants in the same instrument which may be good in part and bad in part. (*Morrys* v. *Leake*, 8 *T. R.* 411.)

Where statute does not cure defective conveyance.

Where a statute points out the manner in which a canal company shall convey lands, and enacts that "every such conveyance shall be valid," it does not cure any defect in the title of lands so conveyed. (*Ward* v. *Scott*, 3 *Camph.* 284.)

Copyholds, when included.

Where an act of parliament alters the service, tenure, or interest in the land in prejudice of the lord or tenant, there the general words of such act will not extend to copyholds; but if an act is made for the public good, and no prejudice accrues to the lord or tenant, there copyholds are within the purview of it. (*Heydon's case*, 3 *Rep.* 7.)

Property not vested within words of act.

If, under an act of parliament, the property in goods, chattels, furniture, clothing, and debts, is vested in certain directors of the poor, yet the property in money and securities for money is not vested in them by those words. (*R.* v. *Beacall, and R.* v. *Willings*, 1 *C. & P.* 454.)

Universities.

Statutes conferring privileges on the members of the universities mean only the members of the universities of Oxford and Cambridge, unless otherwise expressed. (*Jones* v. *Smart*, 1 *T. R.* 49.)

When words of permission obligatory, as the words, "shall and may be," &c.

If a statute says, that anything for the public benefit *may* be done, it shall be sometimes construed that it *must* be done: as the 23 Hen. VI. c. 10, says, *the sheriff, &c. may bail*—he shall be bound to bail. (*R.* v. *Barlow*, *Salk.* 609; *Com. Dig. Parliament*, *R.* 22.)

By the statute 17 Geo. II. c. 38, "*it shall and may be lawful*" for the justices to commit an outgoing churchwarden or overseer who neglects or refuses to account. This renders it *discretionary* only in the justices to commit. (*R.* v. *Justices of Norfolk*, 1 *Nev. & M.* 67; 4 *B. & Adol.* 238, *S. C.*)

The 13 & 14 Car. II. c. 12, enacts, that the overseers *may* make a rate to reimburse the constables: this is construed they *shall*: for they are compellable so to do. (*R.* v. *Barlow*, 2 *Salk.* 609.)

So in the stat. 8 & 9 Will. III. c. 11, s. 8, the words "*may* assign," and "*may* suggest" breaches, are held compulsory on the plaintiff to proceed according to the statute. (5 *T. R.* 636; 2 *Wils.* 577.)

The words "shall and may" are only imperative where the clause in a statute is for the public benefit. (*R.* v. *Flockwold Inclosure Commissioners*, 2 *Chit.* 251; *R.* v. *The Steward of Havering Atte-Bower*, 5 *B. & Ald.* 691; 2 *D. & R.* 176 *n. S. C.*)

But if from the whole act it appears the legislature did not intend the words *shall* and *may* as imperative, they cannot be so construed—as where an act directed it should and might be lawful for trustees to do an act if it should be *deemed proper, &c.*, it was held the enactment was merely directory. (*De Beauvoir* v. *Welch*, 7 *B. & C.* 226; 1 *M. & R.* 81, *S. C.*)

In *R.* v. *the Bailiffs of Eye*, 4 *B. & Ald.* 271; the words "*it shall be lawful*" came under consideration as occurring in one of their bye-laws; on which *Abbott*, C. J., observed, "the words are, '*that it shall be lawful for the bailiffs, &c. to admit.*'" Those words clearly give to the bailiffs a discretionary power to admit the persons who have the qualifications therein mentioned, but they by no means make it imperative on them so to do. (*See also, Allen* v. *Waldgrave*, 2 *Moore*, 625; 8 *Taunt.* 566, *S. C.*)

A provision in an act of parliament that "*it should be lawful*" for a

canal company to weigh sunken vessels under certain circumstances, was held compulsory on the company. (*Parnaby* v. *Doncaster Canal Company*, 3 *Nev. & P.* 523.)

7. *Construction of.*

Directory.

Statutes are sometimes only directory of what is to be done, at other times compulsory, that is discretionary or imperative.

A clause in an act of parliament fixing the time of electing a parish officer, &c., is in general construed as *directory* only. (*See R.* v. *Mayor of Norwich*, 1 *B. & Adol.* 310; *R.* v. *Sparrow*, 2 *Stra.* 1123; *R.* v. *Denbighshire*, 4 *East*, 142.)

And it has often been held where an act orders any thing to be performed by a public body, and merely points out the specific time when it is to be done, that such act is not imperative, but directory, and may be complied with in a reasonable time after the period prescribed. (*See per Littledale, J.*, in *Smith* v. *Jones*, 1 *B. & Adol.* 334.)

The provision of the 52 Geo. III. c. 93, that convictions for sporting without a game certificate shall be entered and registered with the commissioners of taxes of the district, and returned to the clerk of the peace, are directory only. (*See Mason* v. *Barker*, 1 *Car. & Kir.* 101.)

Negative words will make a statute imperative, words in the affirmative are in general only directory. (*R.* v. *Leicester*, "*Justices*," 9 *D. & Ry.* 772; 7 *B. & Cres.* 12, *S. C.*)

For other instances of directory clauses see *R.* v. *Woolstanton*, 1 *Bott.* 610; *Dawson* v. *Gill*, 1 *East.* 64; *R.* v. *Loxdale*, 1 *Burr.* 447; *R.* v. *Birmingham*, 8 *B. & C.* 29.

An Act of the 51 Geo. III. for making the *Bridgewater* and *Taunton* canal, after reciting that the making of that canal would be very prejudicial to the tolls authorized to be levied and collected from the *Tone* navigation, authorized *and required* the company of proprietors of the canal, within three calendar months, to contract and agree with the conservators of the river *Tone* navigation and other persons, proprietors of shares, or parts of shares, or otherwise interested therein, for the absolute purchase of their several and respective estates, rights, and interests in and to the same, and also to contract and agree with the overseers of the poor for the time being of the town of *Taunton*, and the several parishes of *Taunton, St. Mary Magdalen*, and *Taunton St. James*, for the absolute purchase of the respective estates, rights and interests of the said town and parishes, under and by virtue of the said therein recited act.—The 51 Geo. III. was repealed by the 5 Geo. IV.—Held by *Bayley* and *Littledale*, Justices, that the words, within three calendar months, applied to both branches of the clause, and that the canal company therefore were bound to have contracted within that period with the overseers of the poor of the parishes of *Taunton*; and not having done so, they could not afterwards compel them to sell their interest; and by *Parke, J.*, that whether the right to purchase that interest was limited to three months or not, at all events, it was gone when the 51 Geo. III. was repealed. (*Conservators of River Tone* v. *Ash*, 10 *B. & Cres.* 349.)

Reddendo singula singulis.

General words in an act of parliament are often where the sense requires it, and in furtherance of the intention, to be taken distributively *reddendo singula singulis*: thus in the construction of the words "for money or other good consideration paid or given" in the stat. 13 Eliz. c. 5, "paid" is referred to money, and "given" to consideration. (*Dw. on Stat.* 716; *and see* 7 *B. & C.* 570.)

An expression which has precedence in the order of the words must be taken to have been used with reference to things or persons of a higher order or superior rank. Thus where by the London tithe act the houses of "*magnates*" noblemen and noblewomen are exempt, it was held that magnates coming first, must mean persons superior to noblemen and women, and therefore that a dean was not exempted. (*Warden of St. Paul's* v. *the Dean*, 4 *Price*, 65.)

Words of relation "such."

General words may be limited by the relative "such" to a particular description of thing contained in a preceding section. Thus where the 3

7. *Construction of.*

G. IV. c. 39, makes warrants of attorney given under particular circumstances void against the assignees of a bankrupt, and the fourth section requires the defeasance of "such warrant of attorney" to be written on the paper on which the instrument itself is written; this has been twice held to apply only to such warrants of attorney as fall within the former sections of the act. (*Morris* v. *Mellor*, 6 *B. & C.* 446; *Bennett* v. *Daniel*, 10 *B. & C.* 500.)

Words *ejusdem generis.*

The stat. 9 Anne, c. 20, s. 4, giving power to private persons to exhibit *quo warranto* informations for the usurping of offices, relates only to offices in cities, towns corporate, boroughs, and "places," such places being places *ejusdem generis* with those previously named. (*R.* v. *Wallis*, 5 *T. R.* 375; and see as to construing words *ejusdem generis*, *Sandiman* v. *Breach*, 7 *B. & Cres.* 96; 9 *D. & R.* 796, *S. C.*; *ante*, "*Lord's Day*," Vol. III. pp. 1233, 1235; *Lowther* v. *Radnor* (*Earl*), 8 *East*, 113; *ante*, p. 975; *Hare* v. *Horton*, 5 *B. & Adol.* 715; 2 *Nev. & M.* 428, *S. C.*)

General words treating of inferiors do not extend to superiors.

A statute which treats of things or persons of an inferior rank, cannot by any general words be extended to those of a superior. So, a statute treating of "deans, prebendaries, parsons, vicars, and others having spiritual promotion," is held not to extend to bishops, though they have spiritual promotion, deans being the highest persons named, and bishops being of a still higher order. (*Canterbury's case*, 2 *Rep.* 46; *Hard.* 442.) This construction must be presumed to be most conformable to the intention of the legislature.

Where a statute mentions inferior conveyances, the subsequent words, "by any other means," cannot be intended of an act of parliament, which is the highest manner of conveyance that can be; and, therefore, the makers of the act would have put that in the beginning, and not in the end, after the inferior conveyances, if they had intended to extend the act thereunto. (*Archbishop of Canterbury's case*, 2 *Rep.* 46 *b.*; *Copland* v. *Powell*, 1 *Bing.* 373; 8 *Moore*, 400.)

Where a statute speaks of indictments to be taken before justices of the peace, or others having power to take indictments, it shall be understood only of other inferior courts, and not of the King's Bench, or other courts at Westminster. (*Canterbury's case*, 2 *Rep.* 46; 2 *Haw. c.* 27, *s.* 124.)

Court of record.

Where a statute directs a penalty to be recovered in any court of record, this shall not be intended of the quarter sessions, unless it be specially named in such statute; but only of the courts of record at Westminster. (6 *Rep.* 19, 20; 2 *Hale*, 29, 30.)

But general words treating of superiors sometimes include inferiors.

On the other hand, it seems that, if a statute names superiors, it includes inferiors. As, if a statute makes the securities given by the sureties of the farmers of the excise to be exempted out of the act of oblivion, *à fortiori*, the securities of the farmers themselves shall be exempted. (*R.* v. *Hard.* 424.)

Where the moiety of a penalty is given by statute to the treasurer of a county, riding, or division, the word "division" does not apply to small districts, such as the cinque-port of Seaford, in Sussex, but must be construed with reference to county, and riding, and means something analogous to them. (*Evans, q. t.*, v. *Stevens*, 4 *T. R.* 224, 459.)

Neither can it be applied to the different parts of a county, in which the magistrates act under one general commission, but for the convenience of the county adjourn the quarter sessions from one part of it to another, and appoint a separate treasurer for each. (*Id.*)

Express words to take away jurisdiction of superior courts.

In general, nothing but express negative words will take away the jurisdiction of the court of Queen's Bench. (*See R.* v. *Abbott*, *Douglas*, 553, *n.* 1.; *R.* v. *Fell*, 1 *B. & Adol.* 380.)

Or bar the crown.

Nor can the rights of the crown be taken away by doubtful words or ambiguous expressions, but only by express terms. Thus general words taking away the *certiorari* will not take it away at the instance of the crown unless there be some words in the act to show that the legislature intended that the crown should be barred. (*R.* v. *Allen*, 15 *East*, 340.)

The following words and phrases have been brought at various times under the consideration of the courts. 7. *Construction of.*

Received sense of words.

"And" may be relative as well as copulative; as where R. devised 100 sheep and 10 bullocks and £10 quarterly—the second "and" in the sentence disjoins and severs the rent from the sheep and bullocks. (8 *Rep.* 85; *Dw. on stat.* 772.) "And."

"And" may sometimes be read as if it were "or:" thus, where an act of parliament provided that no more than one toll should be demanded from persons passing or repassing the same day with the same "horses, cattle, beasts *and* carriages," it was held that this "and" was disjunctive and distributive, and therefore that the same carriage repassing though drawn by different horses was exempt from toll. (*Waterhouse* v. *Keen*, 6 *D. & Ry.* 257, *misreported* 4 *B. & C.* 200.)

"Anything in this act notwithstanding" corresponds precisely with the words in the second saving of the Stat. of Uses, 27 H. VIII. c. 10, "as if this act had not been made." (7 *Rep. pp.* 2, 20.) "Anything in this act notwithstanding."

As to the construction of expressions of time such as "immediately," "forthwith," and the like, *see* "*Time*," Vol. VI. Expressions of time.

The word "inhabitants" has no definite legal meaning, and must be construed according to the subject-matter and context of the statute or instrument in which it is used. (*See* "*Inhabitants*," Vol. III.) "Inhabitants."

Thus the 11 Geo. III. c. 29, which renders "substantial inhabitants" of the wards of London eligible to the office of collector of the ward rates, applies to resident inhabitants only. (*Downe* v. *Martyr*, 2 *M. & R.* 98; 8 *B. & C.* 62, *S. C.*)

The word "near" in a penal case must be construed strictly, and is not equivalent to the word "next." (*R.* v. *Harvey*, 1 *W. Bl.* 20.) "Near."

"From and to" do not necessarily exclude the place named. (*R.* v. *Knight*, 7 *B. & C.* 413.) In 40 Geo. III. c. 50, is an instance of these words being inclusive as to *time*. (*R.* v. *Stevens & Agnew*, 5 *East*, 256, *n.* (*a*).) "From and to."

For the interpretation of several words not generally occurring in acts of parliament, *see Dw. on stat.* 771—779.

The statute itself, especially of late, frequently contains a clause laying down rules of interpretation of doubtful words and clauses therein, as do the statutes relative to Saving Banks, Friendly Societies, Lunatics, Watching and Lighting Parishes, &c. &c.; and see these respective titles. Enactments in statute itself for its interpretation.

The following is the important provision of the 7 & 8 Geo. IV. c. 28, s. 14, relative to the interpretation of all criminal statutes. The words of the enactment are—"that wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject-matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, hath used or shall use words importing the singular number or the masculine gender only, yet the statutes shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction; and whenever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved.' Rule for the interpretation of all criminal statutes.

Explanatory statutes should not be construed by any strained sense against the letter of the act; for, if any such exposition should be made, there would be no end of expounding. (*Butler and Baker's case*, 3 *Rep.* 25.) They ought to be construed beneficially. Explanatory statutes.

Where there are conflicting decisions upon the construction of a statute, the court must refer to that which ought to be the source of all such decisions; that is, the words of the statute itself. (*Per Ld. Ellenborough*, *R.* v. *Inhabitants of Leek Wootton*, 16 *East*, 122.) Conflicting decisions on construction.

The power of constructing a statute is in the judges of the temporal The judges are to be the construers.

7. *Construction of.*

courts, who, in cases of doubtful construction, are to mould them according to reason and convenience, to the best use. (*Sheffield* v. *Ratcliffe*, *Hob.* 346; *Plowd.* 109; *Heydon's case*, 3 *Rep.* 7.) And that the courts of common law are intrusted with the exposition of statutes; (*see Gould* v. *Gapper*, 5 *East*, 370; 1 *Smith*, 528, *S. C.*; *see further*, *Bac. Ab. Statutes* (H.).)

Effect of wrong construction.

It seems that, if the weight of authority be in construing an act of parliament one way, however wrong that way may be, the courts are bound by it (*See Booth* v. *Ibbotson*, 1 *Y. & J.* 360; 1 *Bla. Com.* 91.)

VIII. Repeal of Statute, what shall be, and its Effect.

Repeal of a statute, what shall be.

We have seen, *ante*, 1161, how long a statute remains in force.

A statute may be repealed by the express words of a subsequent statute, or by implication.

The bare recital of a statute is not sufficient to repeal the positive provisions of a former statute, without a clause of repeal. (*Dore* v. *Gray*, 2 *T. R* 365.)

A statute cannot be repealed by *nonuser*. (*White* v. *Boot*, 2 *T. R.* 275.)

Where the words of an act of parliament are plain, it cannot be repealed by *nonuser*; yet where there has been a series of practice without any exception, it goes a great way to explain the act where there is any ambiguity. (*Per Lord Kenyon, C. J.*, *Leigh* v. *Kent*, 3 *T. R* 364.)

Where two acts of parliament come into operation on the same day, and are repugnant, the one which last received the royal assent virtually repeals the other. (*R.* v. *Middlesex*, 1 *Dowl* 116.)

Common law gives place to statute, and an old to a new one.

Where the common law and a statute differ, the common law gives place to the statute; and an old statute gives place to a new one; and this upon a general principle of universal law, that "*leges posteriores priores contrarius abrogant*;" consonant to which it was laid down by a law of the twelve tables at Rome, that, "*quod populus postremum jussit, id jus ratum esto.*" (1 *Bla Com.* 89; *Bac. Ab Statutes* (D.).)

But this is to be understood only when the latter statute is couched in negative terms, or where its matter is so clearly repugnant, that it necessarily implies a negative. As, if a former act says, that a juror upon such a trial shall have 20*l.* a year, and a new statute afterwards enacts that he shall have twenty marks; here the latter statute, though it does not express, yet necessarily implies a negative, and virtually repeals the former; for if twenty marks be made qualification sufficient, the former statute, which requires 20*l.*, is at an end. (*Jenk. Cent.* 2, 73; *Owen* v. *Saunders*, 1 *Ld. Raym.* 160.)

The stat. 13 Geo. II. c. 28, s. 5, exempting generally from the impress service any harpooner, &c., or seaman in the *Greenland* fishery trade, is impliedly repealed by the 26 Geo III. c. 41, s. 17, which exempts any harpooner, &c., *whose name shall be inserted in a list* required to be delivered on oath, &c.; and which also exempts any seaman entered on board any ship intended to proceed on the said fishery in the following season, *whose name shall be inserted in a list* &c., and *who shall give security*, &c.; for the latter statute superadds the insertion of the seaman's name in such list as a condition precedent to the exemption. (*Ex parte Carruthers*, 9 *East's R.* 4.)

So, the 43 Eliz. c. 2, s. 6, which gives an appeal without limitation as to time against overseers' accounts, is virtually repealed by the 17 Geo. II. c. 38, s. 4, which requires that the appeal shall be to the next general quarter sessions after allowance of the accounts. (*R.* v. *Justices of Worcestershire*, 5 *Maul. & Sel* 457; *and see* 1 *Price*, 439.)

But, if both acts be merely affirmative, and the substance such that both may stand together, here the latter does not repeal the former, but they shall both have a concurrent efficacy.

The law does not favour a repeal by implication; nor is it to be allowed unless the repugnancy be quite plain: for as such repeal carries with it a reflection upon the wisdom of the former parliament, it has ever been confined to the repealing as little as possible of the preceding statute. (11 *Rep.* 63; *Foster's case*, 1 *Roll. R.* 88; 10 *Mod.* 118; *see R.* v. *Inhabitants of Idle*, 2 *Barn. & Ald.* 149; *R.* v. *Drake*, 6 *Maul. & Sel.* 116; *Goldson* v. *Buck*, 15 *East.* 372.) 8. *Repeal of.*

If, by a former law, an offence be indictable at the quarter sessions, and a latter law makes the same offence indictable at the assizes, here the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction, and the offender may be prosecuted at either; unless the new statute subjoins express negative words: as, that the offence shall be indictable at the assizes, *and not elsewere.* (*Foster's case*, 11 *Rep* 63; *Com. Dig. Parliament, R.* 9.)

The 23 Eliz. 1, which gives 20*l.* per month against a recusant, does not take away the penalty of 12*d.* for every *Sunday*, given by the 1 Eliz. c. 2. (*Foster's case*, 11 *Rep.* 63 *b.*)

But, where affirmative words in sense contain a negative,—as, where a new ordinance is made which directs the form or order of the proceeding, it shall be otherwise. (*Pl. Com.* 113.)

Where a new act does not continue the old mode enacted in a prior act, but substitutes a new mode, the substitution of the new mode supersedes, with all its consequences, the old. A variation in the mode implies a change in the intention of the legislature Had it been intended to continue the old system, the use of the old language, and the continuance of the old mode, would naturally have been expected. Where new language is introduced, and a new mode adopted, it must be supposed a new system was intended. (*See, per Bayley, J., Fearnley* v. *Morley*, 5 *B. & C.* 30; 7 *D. & R.* 832, *S. C.*; *Gray* v. *Shilling*, 2 *B. & B.* 3; 4 *Moore*, 371, *S. C.*)

In the construction of a general clause in a new act introducing new provisions and creating new liabilities, that the powers, *provisions*, exemptions, penalties, forfeitures, payments, remedies, matters, and things contained in a former act, relating to the same subject, except as varied by the present statute, should be as effectual for carrying the same into execution as if re-enacted; where the former act took away the right of *certiorari* it has been held that such right was taken away by the new act. (*R.* v. *Fell*, 1 *B. & Adol* 380.) Clause in act extending it to other acts.

Where the intention appears that the subsequent act shall not have such an operation, though the words, taken strictly and grammatically, would repeal a former act, the courts hold that they ought not to receive such a construction. (*See Williams* v. *Pritchard*, 4 *T. R.* 2.) New act does not repeal old, where it is not intended to do so.

Affirmative words in an act of parliament, without any negative, express or implied, do not take away the common law (*Pl. Com.* 112; 2 *Inst.* 200.) Affirmative words do not take away common law.

Where, by the 1 Eliz. c. 2, a minister who does not read the common prayer shall lose the profits of his benefice for the first offence, and being convicted, &c., for a second offence, shall be deprived; yet he might be deprived by the high commission erected by the power of the common law for the first offence, without a conviction, &c., or the methods directed by the statute. (5 *Rep.* 5 *b.*; *De Jur. Eccl.*; *Bac. Ab. Statutes* (G.).)

So general words do not take away a particular privilege or benefit: as the stat. Will. II. c 18, which gives an *elegit*, does not take away the privilege an infant has, that he shall not be sued during his non-age, if an *elegit* be against the heir of a conusor, being an infant. (2 *Inst.* 395.)

A power in an act of parliament to continue private ways does not alter the liability of parties to repair them. (*Anon. Lofft*, 465; *Co. Lit.* 115, *a.*)

Affirmative words in an act of parliament do not repeal the provisions of a former act, unless there be some obvious inconsistency between the enactments. (*Dakins* v. *Seaman*, 9 *Mee. & W.* 777.) Nor repeal former act.

8. *Repeal of.*

An act lately made may be within the equity of an act made long since. (*See Vernon's case*, 4 *Rep.* 1.)

Act lately made within equity of old act.

A statute extends to a provision made by a subsequent act.

A statute extends to a provision made by a subsequent statute. Therefore, a statute shall be extended to cases provided by a subsequent statute; as, if extendors value goods too high, upon the stat. (*Acton Burnel,*) 13 Edw. I., they shall take them at the same price as was provided by the stat. (*de Merc.*) 11 Edw. I. (*Hard.* 214.)

The st. (*M. Ch.* 9.) Hen. III. c. 9, which says "*omnes barones de quinque portibus habeant omnes libertates, et consuetudines suas,*" shall be restrained to such liberties as are not taken away by another branch of the same statute; and therefore they shall not hold *placita coronæ.* (2 *Inst.* 31.)

A statute made in affirmance of the common law extends to all future times. (2 *Inst.* 236.)

Perpetual statute continued by another for a limited time.

If a statute, before perpetual, be continued by an affirmative statute, for a limited time, this does not amount to a repeal thereof at the end of that time. (*Raym.* 397; *Anon. Hob.* 215.)

But subsequent statutes, which add accumulative penalties, and institute new methods of proceeding, do not repeal former penalties and methods of proceeding ordained by preceding statutes without negative words. Nor hath a latter act of parliament ever been construed to repeal a prior act, unless there be a contrariety or repugnancy in them, or at least some notice taken in the former law of the preceding one, so as to indicate an intention in the law-makers to repeal it. Neither is a bare recital in a statute, without a clause of repeal, sufficient to repeal the positive provisions of a former statute. (*Cowp.* 297; 2 *Atk.* 975; *Sharp* v. *Warren,* 6 *Price,* 131; *Dore* v. *Gray,* 2 *Term R* 365.)

Where repealing statute repealed, the first statute revived.

If a statute that repeals another is itself repealed afterwards, the first statute is hereby revived, without any formal words for that purpose. So, when the statutes of the 26 and 35 Hen. VIII., declaring the king to be the supreme head of the church, were repealed by a statute, 1 & 2 P. & M., and this latter statute was afterwards repealed by an act of 1 Eliz., there needed not any express words of revival in Queen Elizabeth's statute, but these acts of King Henry were impliedly and virtually revived. (4 *Inst.* 325.)

But if a statute be repealed by several acts, a repeal of one act, and not of all, does not revive the first statute. (*Case of a Committee concerning Bishops,* 12 *Rep.* 8.)

If an expired statute be afterwards revived by another statute, the law derives its force from the first. (*Shipman* v. *Henbest,* 4 *T. R.* 109.)

Where a statute professes to repeal absolutely a prior law, and substitutes other provisions on the same subject, which are limited to continue only till a certain time, the prior law does not revive after the repealing statute is spent, unless the intention of the legislature to that effect be expressed. (*Warren* v. *Windle,* 3 *East,* 205.)

No proceedings can be pursued under a repealed statute, though commenced before the repeal, unless by special exception. (*Miller's case,* 3 *Wils.* 480; 1 *W. Bla.* 451, *S. C.*)

Where an act of parliament directs a mode of procedure to be adopted as contained in a former act, the repeal of such act does not operate to repeal the procedure directed, which is to be considered as incorporated in the latter act. (*Reg.* v. *Stock,* 3 *Nev. & Per.* 420; 8 *A. & E.* 405, *S. C.*)

Where the law is altered by statute pending an action, the law as it existed when the action was commenced must decide the rights of the parties, unless the legislature, by the language used, show a clear intention to vary the mutual relation of the parties. (*Hitchcock* v. *May,* 6 *Ad. & E.* 943; 2 *Nev. & P.* 72, *S. C.*; *see R.* v. *Mavgan, in Meneage,* (*Inhabs.*) 8 *A. & E.* 496.)

By the 39 Geo. III. c. 79, certain places are declared to be disorderly within the meaning of the 36 Geo. III. c. 3; and a penalty is attached to certain offences committed in those places. Those offences are still pun-

ishable under the former act, although the latter was only passed for a limited period. (*Ex parte Higginbotham*, 9 *Dowl.* 200.)

9. *How Disobedience to, may be punished, &c.*

A contract declared by a statute to be illegal, is not made good by a subsequent repeal of the statute. (*Jacques* v. *Wittey*, 1 *H. Bla.* 65.)

When an act of parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. (*Per Lord Tenterden, C. J.*, 9 *B. & Cres.* 41.)

In March, 1825, a trader committed an act of bankruptcy, upon which a commission might have issued under the statutes relating to bankrupts then in force. On the 1st of May those statutes were repealed; on the 2nd of May the repealing act was repealed and the former acts thereby revived. In July a commission of bankrupt issued: it was held that it was supported by the act of bankruptcy committed in March. (*Phillips* v. *Hopwood, B. & Cres.* 39; *and see Maggs* v. *Hunt*, 4 *Bingh.* 212; *Hewson* v. *Heard*, 9 *B. & Cres.* 754.)

IX. How Disobedience to a Statute may be punished, &c.

How far an indictment will lie, where another method of prosecution is appointed.

Where a statute makes a new offence, which was no way prohibited by the common law, and appoints a particular manner of proceeding against the offender, as by a commitment, or action of debt, or information, without mentioning an indictment, it seems to be settled at this day, that it will not maintain an indictment, because the mentioning the other methods of proceeding only seems impliedly to exclude that of indictment: yet it hath been adjudged that if such statute gave a recovery by action of debt, bill, plaint, information, or otherwise, it authorizes a proceeding by way of indictment. (2 *Haw. c.* 25, *s.* 4.)

And if there be a prohibitory clause in the act, the offender may be indicted upon the prohibitory clause, notwithstanding the penalty; but otherwise it is, where the act is not prohibitory, but only inflicts the forfeiture, and specifies the remedy. (2 *Hale*, 171; *R.* v. *Wright*, 1 *Burr.* 544.)

But where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law or in the method prescribed by the statute: because in that case the sanction is cumulative, and doth not exclude the common law proceeding. (*R.* v. *Robinson*, 2 *Burr.* 803; *Sharp* v. *Warren*, 6 *Price*, 131; *R.* v. *Carlile*, 3 *B. & Ald.* 161; "*Blasphemy*," Vol. I. p. 411.)

Where no method of prosecution is appointed.

But every contempt of a statute is indictable where no other punishment is limited. (1 *Haw. c.* 22, *s.* 5; *see* "*Indictment*," Vol. III p. 857.)

Where defendant may be prosecuted both by the king and party grieved.

And wheresoever an act of parliament doth generally prohibit anything, the party grieved shall not only have his action for his private relief, but the offender shall be punished at the king's suit, for the contempt of the law. (2 *Inst.* 163.)

And when a new offence is created by one clause of an act, and a penalty annexed by a separate and substantive clause, a prosecutor may indict on the clause creating the offence, and is not obliged to sue for the penalty. (*R.* v. *Harris*, 4 *T. R.* 205.)

X. Of pleading a Statute and Proof of.

Pleading a statute.

See the points noticed under *title* "*Indictment*," Vol. III., *title* "*Conviction*." Vol. I. and see further, *Bac. Ab. Statutes* (L.).

Proof of.

As to the mode of proving a statute, *see* "*Evidence*," Vol. II. p. 383.

Stealing. *See "Larceny,"* Vol. III.

Steam-Engine, *maliciously injuring, see "Malicious Injuries to Property,"* Vol. V.; *Nuisance from, see "Nuisance,"* Vol. III.

Stocks.

IT is said that every vill, of common right, is bound to provide a pair of stocks. (2 *Haw. c.* 11, *s.* 5; *Kitch.* 13. *See "Leet,"* Vol. III.)

They ought to be provided at the charge of the town; for, originally, they were not to punish, but to keep men in hold. (1 *Wood's Inst. b.* 4, *c.* 1.)

And the constable, by the common law, may confine offenders in the stocks by way of security, but not by way of punishment.

But, by divers statutes, the stocks are also appointed for the punishment of offenders, in sundry cases, after conviction.

Stock in the Funds and of Companies.

AS to the forgery of stock in the funds, or of companies, &c., *see "Forgery,"* Vol. III. The 1 Will. IV. c. 66, repeals the 8 Geo. I. c. 23, relative to this offence.

As to the embezzlement of, by brokers, &c., *see "Larceny,"* Vol. III.; and as to the stealing of orders, &c., for, *see Id.*

As to conspiring to raise the prices of, *see "Conspiracy,"* Vol. I.

The 6 Geo. IV. c. 91, repeals the bubble act, 6 Geo. I. c. 18; and makes new provisions with respect to granting charters of incorporation to trading and other companies.

Stocking-Frames.

AS to the damaging of stocking-frames, &c., see 7 & 8 Geo. IV. c. 30, s. 3; *"Malicious Injuries to Property,"* Vol. III. p. 28, 30.

As to disputes between masters and servants, and offences by the latter in the silk and cotton manufactures, *see "Servants," ante,* p. 883.

Stores, Naval and Military.

See, *ante*, "*Ships*;" "*Wreck*," *post*, Vol. VI.

[9 & 10 Will. III. c. 41; 9 Geo. I. c. 8; 17 Geo. II. c. 40; 2 Geo. III. c. 30; 39 & 40 Geo. III. c. 89; 49 Geo. III. c. 122; 54 Geo. III. cc. 60, 159; 55 Geo. III. c. 127; 55 Geo. III. c. 80.]

As to the burning of the queen's ships and stores, &c., *see* "*Ships*," *ante*, p. 1014.

As to larceny and embezzlement of stores, *see* "*Larceny*," Vol. III.

As to the receivers of anchors, cables, &c., *see* "*Accessary*," Vol. I.

No warlike or naval stores, except for king's use, shall be made with king's marks, &c.

By the 9 & 10 Will. III. c. 41 (made a public act by the 1 Geo. I. st. 2, c. 25, s. 14), after reciting that, "notwithstanding divers good laws made and enacted, for the preventing of the stealing and embezzlement of his majesty's stores of war, and naval stores, those frauds, thefts, and embezzlements are frequently practised, and the convicting of such offenders is rendered difficult and impracticable, by reason it rarely happens that direct proof can be made of such offender's immediate taking, embezzling, or carrying away any of his majesty's said stores of war and naval stores out of or from his majesty's storehouses, docks, yards, ships, ordnance, or other places for keeping and preserving the same, but only that such goods are marked with the king's mark, and found in the custody and possession of the said person accused of stealing or embezzling the same, to the great encouragement of such wicked offenders, and to his majesty's and the kingdom's great damage: for preventing such embezzlements for the future, and for the more effectual execution of the laws and statutes already in force against such embezzlements and thefts," it is enacted, "That it shall not be lawful to or for any person or persons whatsoever, other than persons authorized by contracting with his majesty's principal officers or commissioners of the navy, ordnance, or victualling-office, for his majesty's use, to make any stores of war or naval stores whatsoever, with the marks usually used to and marked upon his majesty's said warlike and naval or ordnance stores; that is to say, any cordage of three inches and upwards, wrought with a white thread laid the contrary way, or any smaller cordage, to wit, from three inches downwards, with a twine in lieu of a white thread, laid to the contrary way as aforesaid (*a*), or any canvass wrought or unwrought, with a blue streak in the middle, or any other stores with the broad arrow, by stamp, brand, or otherwise, upon pain that every such person or persons, who shall make such goods so marked as aforesaid, not being a contractor with his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, for his majesty's use, or employed by such contractor, for that purpose as aforesaid, shall, for every such offence, forfeit such goods, and the sum of 200*l.*, together with costs of suit; one moiety whereof, shall be to his majesty, and the other moiety to the informer, to be recovered by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, wherein no essoin, privilege, protection, wager of law, injunction, or order of restraint, nor more than one imparlance, shall be allowed."

Penalty on persons in whose custody such marked stores are found, &c. (*a*);

Sect. 2. "Such person or persons, in whose custody, possession, or keeping, such goods or stores (*b*) marked as aforesaid shall be found, not

(*a*) Extended by 54 Geo. III. c. 60, *post*, 1199, to cordage worked with one or more worsted threads; and by 55 Geo. III. c. 127, *post*, 1200, so far as it related to naval stores, to all public stores, &c., and to all persons not authorized intermeddling therewith.

(*b*) Extended to timber by 9 Geo. I. c. 8, s. 3, and by the 55 Geo. III. c. 127, *post*, 1200, to all public stores though not marked.

being employed as aforesaid, and such person or persons who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of 200*l.*,(*a*) together with the costs of prosecution, one moiety to his majesty, and the other moiety to the informer, to be recovered as aforesaid, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods, as he or she shall then be indicted for, and the occasion and reason of such goods coming to his or her hands or possession (*b*)."

Unless he produce a certificate, &c.

Onus probandi to account for possession.

The queen's mark denotes the original ownership; and the *onus probandi* lies on the party to account satisfactorily for his possession, according to the regulations prescribed by the acts for protecting the queen's stores; otherwise the bare fact of possession concludes him.

Possession open to explanation.

But even here the presumption of the *malus animus* arising from the bare fact of possession may be rebutted by circumstances, as in the following case:—A widow woman was indicted before Mr. Justice *Foster*, upon the western circuit, on the 9 & 10 Will. III. c. 41, for having in her custody divers pieces of canvass, marked with the king's mark, in the manner described in the act, she not being a person employed by the commissioners of the navy to make the same for the king's use. The canvass was marked as charged in the indictment, and was clearly proved to be such as was made for the use of the navy, and to have been found in the defendant's custody. The defendant did not attempt to show that she was within any exception of the act, as being a person employed to make canvass for the use of the navy; nor did she offer to produce any certificate from any officer of the crown, touching the occasion and reason of such canvass coming into her possession. Her defence was, that when there happened to be in his majesty's stores a considerable quantity of old sails, no longer fit for that use, it had been customary for the persons intrusted with the stores to make a public sale of them in lots, larger or smaller, as best suited the purpose of the buyers; and that the canvass produced in evidence, which happened to have been made up long since, some for table-linen and some for sheeting, had been in common use in the defendant's family a considerable time before her husband's death; and, upon his death, came to the defendant, and had been used in the same public manner by her to the time of the prosecution. This was proved by some of the family, and by the woman who had frequently washed the linen. This sort of evidence was strongly opposed by the counsel for the crown, who insisted that, as the act allows of but one excuse, the defendant, unless she could avail herself of that, could not resort to any other; that, if the canvass were really bought of the commissioners, or of persons acting under them, there ought to have been a certificate taken at the time of the purchase, and the second section admits of no other excuse. But the judge was of opinion, that though the clause of the statute, which directs the sale of these things, had not pointed out any other way for indemnifying the buyer than the certificate, and though the second section seemed to exclude any other excuse for those in whose custody they should be found, yet still the circumstances attending every case which might seem to fall within the act ought to be taken into consideration; otherwise, a law calculated for wise purposes might, by too

(*a*) The penalty may be mitigated. (9 Geo. I. c. 8, s. 4; 17 Geo. II. c. 40, s. 10.) By the 9 Geo. I. c. 8, s. 4, he may be punished with imprisonment and hard labour for not more than 6 months. For a second offence he may by the 39 & 40 Geo. III. c. 89, ss. 5, 7, be transported for 14 years, or fined, or imprisoned.

(*b*) By the 17 Geo. II. c. 40, *post*, 1188, the offence may be tried at the sessions or assizes.

rigid a construction of it, be made a handle for oppression. There was no room to say that this canvass came into the possession of the defendant by any act of her own: it was brought into family use in the lifetime of her husband, and it continued so to the time of his death; and by act of law it came to her. Things of that kind had been frequently exposed to public sale; and, though the act pointed out an expedient for the indemnity of the buyers, yet, probably, few buyers, especially where small quantities had been purchased at one sale, had used the caution suggested to them by the act. And if the defendant's husband really bought the linen at a public sale, but neglected to take a certificate, or did not preserve it, it would be contrary to natural justice, after such a length of time, to punish her for his neglect. He therefore thought the evidence given by the defendant proper to be left to the jury; and directed them, that if, upon the whole evidence, they were of opinion that the defendant came to the possession of the linen without any fraud or misbehaviour on her part, they should acquit her; and she was accordingly acquitted. (*Fost. App.* 439, *edit of* 1792; 2 *East's P. C.* 765.)

Other evidence than certificate to account for possession.

A defendant against whom the possession of stores is proved may discharge himself by other evidence than that of a navy-board certificate; as will appear from the case of *R.* v. *Banks*, (1 *Esp.* 144,) wherein Lord *Kenyon*, C. J., said, that though in prosecutions under the statutes 9 & 10 Will. III. c. 41, and 17 Geo. II. c. 40, s. 10, it was sufficient for the crown to prove the finding of the stores with the king's mark in the defendant's possession, to call upon him to account for that possession and the manner of his coming by them, so as to throw the *onus* upon the defendant, of proving that he had legally become possessed of them; yet, that the defendant had other means of showing that he had lawfully become possessed of them than by the production of the certificate from the navy board; as, for example, he might show that he had bought them from another person who was in the practice of buying stores at the navy sale; and who, therefore, might fairly be presumed to have had the regular certificate, but who, when he sold part to the defendant, could not, consistently with his own safety, part with the certificate he had obtained, of his having been the purchaser of the whole lot.

Proof of defendant not being a contractor.

It is said to have been agreed, that although an indictment state that the prisoner, "then or at any time before not being a contractor with or authorized by the principal officers or commissioners of our said lord the king, of the navy, ordnance, &c. for the use of our said lord the king, to make any stores of war, &c;" yet, that it is not incumbent on the prosecutors to prove this negative averment, but that the defendant must shew, if the truth be so, that he is within the exception in the statute. (*Willis's case*, 1791, 1 *Hawk. P. C. c.* 89, *s.* 17.)

Difference between receiving and having in possession.

An indictment, Winchester, March, 1801, *cor. Le Blanc*, J., (2 *East's P. C.* 767,) charged that *Thomas Cole*, on the 28th January, 1801, unlawfully, willingly, and knowingly did *receive and have* in his custody, possession and keeping, certain naval stores of the king, being all marked with the broad arrow, he not being a contractor, &c., against the statute, &c. The jury found the prisoner guilty; but said they did not find that he *received* the stores after the 28th July, 1800, but only that he had them in his possession after that day. Judgment was thereupon respited to take the opinion of the judges, a majority of whom inclined to think that the statute was to be construed in the disjunctive, and the word *or* (receive *or* have) not to be taken as *and*; but, because of the disagreement of some, and that the case was not likely to occur again, the prisoner, on the finding of the jury, was recommended to mercy. It seemed, however, to be agreed, that the case was not within the 9 & 10 Will. III. c. 41, because the goods were not charged to have been found in the prisoner's possession.

Informer a witness.

The informer is a competent witness on the indictment. (*See R.* v. *Cole*, 1 *Esp.* 169; and *see* further, "*Evidence*," Vol. II. p. 435.)

Form of indictment.

An indictment, under the 39 & 40 Geo. III. c. 89, alleged that A., on the 19th day of May, 1842, not being a contractor, &c., had in his possession certain naval stores:—It was held, that the date given applied to the allegation that A. was not a contractor, as well as to the allegation that he had possession of the stores, and therefore that it was sufficiently averred that he was not a contractor at the time of such possession. (*Silversides* v. *Reg.*, 2 *Gale & D.* 617.)

Joinder of counts.

Notwithstanding the having in possession new stores, or stores not more than one third worn, is subject to transportation for fourteen years by the 39 & 40 Geo. III. c. 89, s. 1; and the having in possession stores not new or more than one third worn is by the second section of that act subjected to a different punishment, yet counts for both these offences may be included in the same indictment. (*Per Lord Ellenborough, C. J., in R.* v. *Johnson*, 3 *M. & Selw.* 550.)

See a form of indictment for illegally having possession of the queen's stores. (*Jerv. Arch. C. L. 9th ed.*)

When forfeiture accrues.

The forfeiture under the 9 & 10 Will. III. c. 41, s. 2, accrues by conviction on an indictment. (*R.* v. *Harman*, 1 *Lord Raym.* 1104.)

Corporal punishment may be inflicted.

Under this act the court have authority to adjudge the offender to suffer corporal punishment, although he be ready and offer to pay the penalty of 200*l.* (*Bland's case*, 2 *E. P. C.* 760; 5 *T. R.* 370, *S. C.*) In this case the defendant's counsel contended that, as their client could pay the penalty, the court had no authority to inflict corporal punishment. But the court said that the words of the statutes were in the disjunctive, enabling them either to impose a penalty, *or to punish the offender corporally*; and that this construction had already been put on the statutes in several instances, particularly in the case of *R.* v. *Newell, M.* 33 *G.* 3. And this appearing to the court to be a gross case, they sentenced the defendant to Clerkenwell prison for three months, there to be kept to hard labour, and during that time to be publicly whipped on Clerkenwell Green for the space of 100 yards.

Costs may be awarded.

Though there was no instance prior to *Trinity* term, 46 Geo. III., in which the defendant had been ordered to pay the *costs*, the court of King's Bench adjudged the defendant (*A. Chapple*) to pay the penalty of 200*l.*, together with the costs. (5 *T. R.* 371, *note* (*a*).)

Hard labour cannot be imposed.

The power of sentencing to hard labour is considered to be taken away by the 39 & 40 Geo. III. c. 89, s. 2, *post*, 1189. (*R.* v. *Bridges*, 8 *East*, 53.) The defendant was brought up to receive judgment after conviction on the 9 & 10 Will. III. c. 41, s. 2, for unlawfully having in his possession naval stores, &c., and judgment was about to be pronounced that he should be imprisoned in the house of correction for the county of Surrey, and there kept to hard labour for three calendar months, and once during that time publicly whipped. This would have been warranted by the 17 Geo. I. c. 40, s. 10, reciting the 9 & 10 Will. III. c. 41, and 9 Geo. I. c. 8; but a doubt occurring how far the power of sentencing to hard labour was taken away by the subsequent stat. 39 & 40 Geo. III. c. 89, s. 2, the court, upon further consideration and comparing the different provisions of these statutes, were of opinion that the power of sentencing to hard labour was taken away by the latter statute, and therefore pronounced judgment that the defendant should be imprisoned in the house of correction for the county of Surrey for three calendar months, and be once during that time publicly whipped. (2 *Russ. on Crimes, by Greaves*, 269.)

It has been also decided in a recent case in error, that the offence of concealing or having unlawfully in possession naval stores, not being a contractor with, &c., or employed by any such contractor, is not punishable with hard labour under stat. 39 & 40 Geo. III. c. 89, coupled with stat. 7 & 8 Geo. IV. c. 27, ss. 1, 2. (*Silversides* v. *Reg.* (*in error*), 2 *Gale & D.* 617.)

Commissioners of navy, ordnance, &c., may sell stores so marked, &c.

Sect. 4. "The said principal officers or commissioners of the navy, ordnance, or victualling office for the time being, may sell and dispose of any of the stores aforesaid, so marked as aforesaid, as they did or might have

done before the making of this act; and that such person or persons as heretofore have or shall hereafter buy any such stores, or other stores so marked as aforesaid, of the said principal officers or commanders, or by their order, may keep and enjoy the same without incurring the penalty of this act, or any law to the contrary whatsoever, upon producing a certificate or certificates under the hand and seal of three or more of the said principal officers or commissioners of the navy, ordnance, or victualling-office, that they bought such goods from them the said principal officers or commissioners, or from such person or persons as did buy the said stores from the said principal officers or commissioners, at any time before such stores were found in their custody; in which certificate or certificates the quantities of such stores shall be expressed, and the time when and where bought of the said commissioners, who, or any three or more of them, for the time being, are hereby empowered and directed, from time to time, to give to such person or persons, who shall desire the same, and have bought, and shall hereafter buy any of the aforesaid stores, within thirty days after the sale and delivery of the said stores so sold, or to be sold as aforesaid."

9 & 10 Will. III. c. 41.

Buyer to have a certificate thereof, &c.

Quantities to be expressed.

Sect. 5. "In case any person or persons shall be sued or prosecuted for or by reason of their discovering or seizing any such stores or goods so marked as aforesaid, that in every such case, such persons so sued or prosecuted, may plead the general issue, and give this act and the special matter in evidence. And in case, that upon the trial of such issue, the defendants so sued shall make proof, that such goods or stores, so discovered or seized by them, were so marked as aforesaid, and that the plaintiffs or prosecutors in such suit or prosecution shall not at such trial make good proof that they were so employed, or had such certificate as aforesaid, before such discovery and seizure made, and that they did show the same unto such defendants before such suit or prosecution commenced or brought, such defendant shall be acquitted and found not guilty thereupon; unless such defendants, upon sight of such certificate, did not deliver back unto such plaintiffs or prosecutors, at their request, or otherwise, all such goods and stores so seized, in as good plight and condition as they were at the time of such certificate shown; and in case any such defendants shall be so or otherwise acquitted on such trial, and that such plaintiffs or prosecutors shall discontinue such their suit or prosecution, or be nonsuited therein, such defendants shall recover treble costs."

Persons sued may plead the general issue, &c.

Evidence

By the 9 Geo. I. c. 8, s. 3, reciting that, by the 9 & 10 Will. III. c. 41, "a penalty of 200*l.*, with costs of prosecution and pain of imprisonment, is inflicted upon persons having in their custody, possession, or keeping, or concealing, contrary to the said act, any warlike, naval, or ordnance stores therein mentioned, or any other stores marked with the broad arrow, by stamp, brand, or otherwise: and whereas it is necessary to give power to mitigate the said penalties, and to explain and amend the said act," it is enacted, "That if any person or persons shall be lawfully convicted of having in his, her, or their custody, any timber, thick stuff, or plank, marked with the broad arrow, by stamp, brand, or otherwise, or of concealing any timber, thick stuff, or plank, so marked, every such person so offending shall suffer, forfeit, and pay, as for having, keeping, or concealing any other warlike, naval, or ordnance stores contrary to the said act."

Persons having marked timber, &c. to suffer as in case of having other stores.

Sect. 4. "It shall and may be lawful to and for any judge, justice, or justices, before whom any offender or offenders shall be convicted of any of the crimes before recited, enacted, or mentioned in this act, to mitigate the penalty for the same, as he or they shall see cause, and to commit the offender or offenders so convicted to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated as aforesaid, or to punish such offender or offenders corporally, by causing him, her, or them to be pub-

Power to mitigate penalties.

9 Geo. I. c. 8.

licly whipped, or (*a*) committed to some public workhouse, there to be kept to hard labour for the space of six months, or a less time, as to such judge, justice, or justices, in his or their discretion shall seem meet; anything in the said recited act or in any other act to the contrary notwithstanding."

Sect. 5. "That where any dispute shall arise between the persons, upon whose informations or oaths, any person or persons offending in the premises, or against the said former act, shall be prosecuted and convicted, touching any right or title to any of the forfeitures or penalties beforementioned, or any part thereof, the judge, justice or justices before whom such offender or offenders shall be convicted, shall examine the matter and finally determine the same."

Judges of assize or quarter sessions may try offences relating to the stores, &c. and may fine, &c.

And the 17 Geo. II. c. 40, s. 10, also reciting, that "some doubts having arisen touching the method of trial and punishment of offenders against the said recited acts, whether, as the said acts are worded, such offender or offenders may be indicted and tried for the crimes and offences in the said acts mentioned, and whether any judge, justice, or justices of assize, or or justices of the peace at the sessions, may hear, try, and determine the same, and on conviction set such fine, or mitigate the same, and the forfeitures and penalties inflicted by the aforesaid acts, on such offender or offenders, as the nature of the offences may deserve, or whether such offenders as aforesaid, in order for recovering the said forfeitures and penalties inflicted by the said act, can only be proceeded against by action of debt, bill, plaint, or information, in some of his majesty's courts of record at Westminster; by reason of which doubts, it has so happened, that offenders against the said recited acts, having been indicted for the same, have escaped unpunished, to the great encouragement of such offenders and others to commit the like crimes and offences for the future: for the remedying whereof, and for the explaining the acts above mentioned," declares and enacts, "That it shall and may be lawful to and for any judge, justice, or justices at the assizes, or justices of the peace at the general quarter sessions to be holden for any county, city, borough, or town corporate, to hear, try, and determine, by indictment, or otherwise, all or any the crimes or offences mentioned in the said recited acts; and that the said judge, justice, or justices of assize, or justices of the peace, as aforesaid, before whom such offender or offenders shall be indicted, or tried, and convicted of all or any the crimes or offences in the said recited acts mentioned, may impose any fine, not exceeding the sum of 200*l.*, on such offender or offenders; one moiety to be paid to his majesty, and the other moiety to the informer; and may mitigate the said penalty and forfeitures, inflicted by the said recited acts, or either of them, and to commit the offender or offenders so convicted and fined to the common gaol of the county or place where the offence shall be committed; there to remain without bail or mainprize, until payment be made of the penalty and forfeitures imposed by this or the said former acts, so mitigated as aforesaid; or, in lieu thereof, to punish such offender or offenders in the premises corporally, by causing him, her, or them to be publicly whipped, and committed to some house of correction, or public workhouse, there to be kept to hard labour for the space of three months, or less time, as to such judge, justice, or justices of assize, or justices of the peace, shall in his or their discretion seem meet; anything in the said recited acts or in any other act to the contrary notwithstanding." (*See R.* v. *Bland, ante*, 1186; *and R.* v. *Banks, ante*, 1185.)

Commissioners of navy, &c. may act as justices.

By the 9 Geo. III. c. 30, s. 5, the treasurer, controller, surveyor, clerk of the acts, or any commissioner of the navy, may act as justices, in causing the offenders to be apprehended, committed, and prosecuted for the same.

(*a*) It is to be observed, that in this stat. 9 Geo. I. c. 8, s. 4, it is *or* committed. In the 17 Geo. II. c. 40, s. 10, it is *and* committed.

The 39 & 40 Geo. III. c. 89, recites the 9 & 10 Will. III. c. 41; 9 Geo. I. c. 8; and 17 Geo. II. c. 40, s. 10; and reciting, that "notwithstanding the penalties and punishments inflicted by the said recited acts, the stealers, embezzlers, and receivers of his majesty's warlike, and naval, ordnance, and victualling stores have greatly increased, so that it has become necessary to make some further and more effectual provision for preventing their wicked practices in future," enacts, "That from and after the passing of this act, every person or persons (such person or persons not being a contractor or contractors, or employed as in the said recited act of the 9th and 10th years of the reign of king William the Third is mentioned,) who shall willingly or knowingly sell or deliver, or cause or procure to be sold or delivered, to any person or persons whomsoever, or who shall willingly or knowingly receive, or have in his, her, or their custody, possession, or keeping, any stores of war, or naval, ordnance, or victualling stores, or any goods whatsoever marked as in the said recited acts are expressed, or any canvass marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper, otherwise called bunting, wrought with one or more streaks of raised tape (the said stores of war, or naval, ordnance, or victualling stores or goods above mentioned, or any of them, being in a raw or unconverted state, or being new, or not more than one-third worn,) (*a*), and such person or persons who shall conceal such stores or goods, or any of them, marked as aforesaid, shall be deemed receivers of stolen goods, knowing them to have been stolen, and shall, on being convicted thereof in due form of law, be transported beyond the seas for the term of fourteen years, in like manner as other receivers of stolen goods are directed to be transported by the laws and statutes of this realm, unless such person or persons shall, upon his, her, or their trial, produce a certificate under the hands of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victualling, expressing the numbers, quantities, or weights of such stores or goods, as he, she, or they shall then be indicted for, and the occasion and reason of such stores or goods coming to his, her, or their hands or possession." (*b*).

Every person (not being a contractor, &c.,) who shall sell or receive any new stores of war, &c., or who shall conceal them, shall be deemed receivers of stolen goods, and, as such, transported for fourteen years,

unless he produces, on the trial, a certificate from the navy board, &c.

Sect. 2. "Such person or persons (not being a contractor or contractors, or employed as aforesaid), in whose custody, possession, or keeping, any of the said stores called canvass, marked with a blue streak in a serpentine form, or bewper, otherwise called bunting, wrought as above mentioned, shall be found (such canvass or bewper, otherwise called bunting, not being charged to be new, or not more than one-third worn), and all and every person and persons who shall be convicted of any offence contrary to so much of the said recited act of the 9th and 10th years of the reign of king William the Third, as relates to the making, or having in possession, or concealing any of his majesty's warlike, or naval, or ordnance stores, marked as therein specified, shall, besides forfeiting such stores, and the sum of 200*l.*, together with costs of suit as therein mentioned, be corporally punished by pillory (*c*), whipping, and imprisonment, or by any or either of the said ways and means, in such manner and for such space of time as to the judge or justices before whom such offender or offenders shall be convicted, shall seem meet; anything in the said last-mentioned act, or in the before-recited acts of the 9th year of king George the First, and the 17th year of king George the Second, to the contrary thereof in anywise notwithstanding: Provided always, that it shall and may be lawful to and for such judge or justices to mitigate the said penalty

Persons in whose custody shall be found canvass or bunting, marked as herein mentioned (not being charged to be new, or not more than one-third worn), and persons who shall be convicted of any offence contrary to so much of 9 & 10 Will. III. as relates to warlike stores, shall, besides the forfeiture thereby imposed, suffer corporal punishment.

Mitigation of penalty.

(*a*) Extended by 55 Geo. III. c. 127, *post*, 1200, to any public stores, whatever.

(*b*) Or by 56 Geo. III. c. 80, *post* 1201, unless he so produces, &c. a certificate of the stores having been sold on a foreign station; or, 39 & 40 Geo. III. c. 89, s. 25, *post*, 1197, a certificate as therein provided for; or unless he account for the possession of them in some other manner. (*R.* v. *Banks*, 1 *Esp.* 144, *ante*, 1185.)

(*c*) Abolished by 56 Geo. III. c. 138, and 1 Vict. c. 23, *ante*, "*Pillory.*"

39 & 40 Geo. III c. 89.

of 200*l.*, as he or they shall see cause." (See the cases on this section *ante*, 1186; see also the 7 & 8 Geo IV. c. 27, s. 1 & 2, as to hard labour.)

As to the exemption of contractors.

Sect. 3. "Nothing in this act, or in the said recited act of the 9th and 10th years of the reign of king William the Third, contained, shall extend, or be deemed, taken, or construed to extend to exempt from the operation of this act, or the said recited act respectively, any person or persons being a contractor or contractors, or employed as in the said last-mentioned act is mentioned, except only so far as concerns stores or goods marked as aforesaid, which shall be *bonâ fide* provided, made up, or manufactured by such person or persons, or by their order, and which shall not have been before delivered into his majesty's store, unless, having been so delivered, they shall have been sold or returned to such person or persons by the commissioners of his majesty's navy, ordnance, or victualling respectively."

Defacing mark on his majesty's stores, felony.

Sect. 4. "If any person or persons shall, from and after the passing of this act, wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate or erase, wholly or in part, any of the marks in the said act of the 9th and 10th years of the reign of king William the Third, or in this act mentioned, or any other mark whatsoever, denoting the property of his majesty, his heirs or successors, in or to any warlike, or naval, ordnance, or victualling stores, or cause, procure, employ, or direct any other person or persons so to do, for the purpose of concealing his majesty's property in such stores, such person or persons shall be deemed guilty of felony, and shall, on being convicted thereof, be transported to parts beyond the seas for the term of fourteen years, in like manner as other felons are directed to be transported by the laws and statutes of this realm."

Second offence

Sect. 5. "If any person or persons who shall hereafter be convicted of any offence contrary to this act, for which he shall not have been transported beyond the seas, or contrary to the said recited act of the 9th and 10th years of king William the Third, shall be guilty of a second offence, either contrary to that act or to this present act, which would not otherwise, as the first offence, subject him, her, or them to transportation, and shall be thereof legally convicted, such person or persons shall, by judgment of the court wherein he, she, or they shall be so convicted, be transported to parts beyond the seas for the term of fourteen years, in like manner as other offenders may be transported by the laws and statutes of this realm now in force."

Returning from transportation

Sect. 6. "If any person or persons transported in pursuance of this act, shall return into any part of Great Britain or Ireland before the end or expiration of the term for which he or she shall have been so transported, every such person or persons so returning shall suffer as felons, and shall have execution awarded against him, her, or them, as persons attainted of felony without benefit of clergy."

Mitigation of punishment.

Sect. 7. "It shall and may be lawful to and for the court before whom any offender or offenders shall be indicted and convicted of all or any of the crimes or offences hereinbefore mentioned to be punishable with transportation, to mitigate or commute such punishment, by causing the offender or offenders to be set on the pillory (*a*), publicly whipped, fined or imprisoned, or by all or any one or more of the said ways and means, as such court in its discretion shall think fit: one moiety of which fine (if any imposed) shall be to his majesty, his heirs and successors, and the other moiety thereof to the informer, and also to order such offender or offenders to be imprisoned until such fine be paid; anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

Rewards for apprehending offenders.

Sects. 8, 9, and 10 give rewards for apprehending offenders. But by 2 Will. IV. c. 40, s. 34, these rewards are reduced, and instead thereof the following rewards shall be paid, that is to say, "any sum not exceeding 10*l.* upon convictions in prosecutions by indictment, and not exceeding 50*s.* upon summary convictions, in the respective cases mentioned in the said act; and that no reward shall be payable in cases where the fine in-

(*a*) See note (*c*) preceding page.

flicted on the offender shall amount to 20*l.*, unless such fine shall fail to be paid as provided in the said act; and that it shall be lawful to mitigate the pecuniary penalty of 10*l.*, in cases of summary convictions, to any sum not less than 40*s.*" 39 & 40 Geo. III. c. 89.

Sect. 11. "It shall and may be lawful to and for any commissioner of the navy, ordnance, or victualling, for the time being (who, for the purposes hereinafter mentioned, is hereby authorized to act in every respect as if he had been named as a justice of the peace in the commission of the peace for the county, city, division, town corporate, liberty, or place in which he shall be resident, or into which his warrant shall be issued), or any justice of the peace for any county, division, city, town corporate, liberty, or place, within this kingdom, upon the oath of one or more credible person or persons, that there is reason or cause to suspect that any navy, ordnance, or victualling stores or goods belonging to his majesty, his heirs or successors, are concealed in any dwelling-house, warehouse, workshop, outhouse, yard, garden, or other place, or on board any ship, vessel, barge, boat, or other craft, by warrant under his hand and seal, to cause every such dwelling-house, warehouse, workshop, outhouse, yard, garden, or place, ship, vessel, barge, boat, or other craft, in whatsoever county, division, city, town corporate, liberty, or place, the same or any of them shall be (in case such warrant shall be granted by a commissioner as aforesaid), to be searched in the day-time by any police-officer, constable, headborough, or other peace-officer, either of the county, division, city, town corporate, liberty, or place in which the premises, ship, vessel, barge, boat, or other craft shall be, or in which the commissioner granting such warrant (if granted by a commissioner) shall then reside; and in case any stores or goods marked as hereinbefore or in the said recited act of the 9th and 10th years of king William the Third is mentioned, shall upon such search be found, to cause the same, and the offender or offenders, to be brought before such commissioner or justice of the peace, who is hereby required to commit or bind over, or otherwise to deal with such offender or offenders according to law, for such his or their offence; and that in case, upon any such search, or upon any seizure whatsoever of stores or goods, marked as aforesaid, any naval, ordnance, or victualling stores, not so marked as aforesaid, shall be found, which may reasonably be suspected to belong to his majesty, the party or parties in whose possession or keeping the same shall be found shall be required to give to the commissioner or justice of the peace respectively before whom the said stores or goods shall and may be brought, an account to the satisfaction of such commissioner or justice, that the same were not embezzled or stolen from any of his majesty's ships or vessels, yards, storehouses, or other places, or that, if the same were embezzled or stolen, the same had come to the possession of the said party or parties honestly, and without any knowledge or suspicion that the same had been embezzled or stolen; on failure whereof by a reasonable time, to be set by such commissioner or justice of the peace, the said stores or goods shall thereupon become forfeited, and such party or parties shall be deemed and adjudged guilty of a misdemeanor." Houses, &c., may be searched where stores are suspected to be concealed.

Sect. 12. "It shall and may be lawful for any person or persons deputed or appointed by the principal officers or commissioners of the navy, ordnance, or victualling, or any three of them respectively, at any time or times from and after the passing of this act, to stop, search, and detain in some place of safety, any barge, boat, or other craft, which there shall be reason to suspect doth contain any naval, ordnance, or victualling stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things stolen, embezzled, or unlawfully procured from or out of any of his majesty's ships or vessels, yards, storehouses, or other places, and also to apprehend and detain, or cause to be apprehended and detained, any person or persons who may be reasonably suspected of having or conveying any such stores or other things in such barge, boat, or craft, and such person or persons so apprehended shall be (as soon as conveniently may be) conveyed before any commissioner of the navy, ord- Persons deputed may detain craft, &c., suspected of having stolen articles on board.

39 & 40 Geo. III. c. 89.

nance, or victualling, for the time being, or before one or more justice or justices of the peace for the county, division, city, town corporate, liberty, or place in which such seizure shall be made, together with the stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things so found in such boat or other craft; which said commissioner or justice is hereby required to commit or bind over, or otherwise to deal with such person or persons according to law, in respect to any of the said last-mentioned stores and things which shall be so marked as aforesaid; and in respect to any of such stores and things which shall not be so marked, but which shall nevertheless be reasonably suspected to be the property of his majesty, the said person or persons on whom the same shall be found shall be required to give an account, to the satisfaction of such commissioner or justice, that the same were not embezzled or stolen as aforesaid, or that, if they were embezzled or stolen, the same had come to his or their possession honestly, and without any knowledge or suspicion that the same had been embezzled or stolen; on failure whereof, by a reasonable time, to be set as aforesaid, the said last-mentioned stores or things shall thereupon become forfeited, and the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor; and in case the said person or persons shall be convicted of stealing, embezzling, or unlawfully having in his, her, or their possession any of the said stores or things which shall be so marked as aforesaid, or shall be adjudged guilty of a misdemeanor for not giving a satisfactory account as aforesaid, with respect to such of the said stores or things as shall not be so marked as aforesaid, such barge, boat, or other craft in which such stores or things, or any of them, shall be found, with its tackle, apparel, and furniture, shall, upon such conviction or adjudication, become and be adjudged by such commissioner or justice forfeited, and shall be disposed of in manner hereinafter mentioned."

Persons so deputed may apprehend suspected persons.

Sect. 13. "It shall and may be lawful to and for any person or persons deputed or appointed as aforesaid, or any police-officer, constable, headborough, or other peace-officer, or any beadle or watchman (during such time as he shall be on duty) of every parish and place where he shall be an officer, to apprehend and detain, or cause to be apprehended and detained, all and every person and persons who may reasonably be suspected of having or carrying, or anyways conveying any naval, ordnance, or victualling stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things stolen or unlawfully procured from or out of any of his majesty's ships or vessels, yards, storehouses, or other places, and also to seize and detain in some place of safety, such stores, materials, or things as last aforesaid; and, as soon as conveniently may be, to convey, or cause the person or persons so apprehended to be conveyed before any commissioner of the navy, ordnance, or victualling, or before any one or more justice or justices of the peace, for any county, division, city, town corporate, liberty, or place in or near to the place of seizure, together with the said stores and other things; and such and the like proceedings shall and may be had and taken against the said person or persons, in respect of such last-mentioned stores or things, whether marked or not marked, and such forfeiture be incurred, and adjudication made, as are above directed with respect to stores found in any barge, boat, or other craft as aforesaid."

Articles herein declared forfeited to be returned into his majesty's stores.

Sect. 14. "All and every the stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things, which are hereinbefore declared to be forfeited on the party or parties not giving to the commissioner or justice a satisfactory account that the same were not embezzled or stolen as aforesaid, shall be forthwith returned into his majesty's store, and shall be applied for the use and benefit of his majesty, his heirs and successors, unless proof shall be made within three calendar months next following such seizure, to the satisfaction of such commissioner or justice of the peace, that the same stores and other things are the property of any other person or persons; in which case the said commissioner or

justice shall cause the same to be forthwith delivered up to such person or persons, on his or their giving a proper receipt or discharge for the same, and paying the reasonable costs and charges (to be set by such commissioner or justice) attending the conveyance thereof to and from his majesty's store, and the warehousing or safe custody thereof from the time of the seizure." 59 & 40 Geo. III. c. 89.

Sect. 15. "It shall and may be lawful to and for such commissioner or justice of the peace respectively, by whom any barge, boat, or other craft shall be adjudged to be forfeited in pursuance of this act, and he is hereby authorized and required forthwith, after such adjudication, to issue his warrant to the collector or other chief officer of the customs at the port at or nearest to the place where such seizure shall be made, for the sale of such barge, boat, or other craft; which said collector or other chief officer, by virtue thereof, shall and is hereby authorized and required, within one month then next following, to cause such barge, boat or other craft, together with its tackle, apparel, and furniture, to be publicly sold to the highest bidder, notice of which sale shall be given in some or one of the public papers in circulation in the city, town corporate, or place where such sale shall be made; and the money arising from such sale, after payment of the reasonable expenses and charges attending the same, and of securing such barge, boat, or other craft from the time of the seizure thereof (to be ascertained by such commissioner or justice of the peace), shall thereupon be forthwith paid by such collector or other officer of the customs into the hands of such commissioner or justice of the peace respectively, and be by such commissioner or justice within one calendar month then next following paid and disposed of in the manner following; (that is to say,) one moiety thereof to the person or persons (or his or their representatives, if dead) who shall have made seizure of such barge, boat, or other craft, and the other moiety thereof to the treasurer of his majesty's navy for the time being (in case the stores seized shall be naval or victualling stores), to be by him applied in such and the same manner as the monies arising from the sale of old stores in his majesty's dock-yards now are, or for the time being shall be applicable; and in case the stores seized shall be ordnance stores, then the said other moiety shall be paid to the treasurer of his majesty's ordnance for the time being, to be by him applied in such manner for the use of his majesty, as the master-general and principal officers of his majesty's ordnance for the time being shall order and direct." Craft, &c., forfeited, may be sold.

Sect. 16. "Every person deemed and adjudged guilty of any of the misdemeanors aforesaid, before any commissioner or justice of the peace as aforesaid, shall for every such misdemeanor forfeit for the first offence the sum of 10*s.*, for the second offence the sum of 5*l.*, and for the third and every subsequent offence the sum of 10*l.*, over and above the other forfeitures above mentioned: all which said respective forfeitures shall and may be levied by distress and sale of the goods and chattels of every such offender (rendering to him or them the overplus, after the charges of the said distress and sale deducted), by warrant under the hand and seal of such commissioner or justice of the peace, before whom such offender was convicted, directed to any constable or other peace-officer of the county, division, city, town corporate, liberty, or place, and shall be disposed of in the manner following; (that is to say,) one moiety to the person or persons apprehending such offender or offenders, or giving information, as the case shall be, and the other moiety thereof to the treasurer of the navy or ordnance for the time being, as the case may require, to be applied as before mentioned; and in case the constable or other peace-officer to whom such warrant shall be directed, shall return to such commissioner or justice of the peace that the offenders or offender named therein have not or hath not any goods or chattels in his county or constablewick, whereby he can levy the said penalty (which return the said constable or other peace-officer is hereby required in that case to make within a reasonable time, to be set by the said commissioner or justice of the peace, and during Penalty on persons guilty of misdemeanors.

39 & 40 Geo. III. c. 89.

which time the said offenders or offender shall be kept in safe custody by the order of such commissioner or justice of the peace), then and in such case the said commissioner or justice shall, and he is hereby required, by warrant under his hand and seal, directed as aforesaid, to cause such offenders or offender to be committed to the common gaol of the county, division, city, town corporate, liberty, or place, in which such seizure shall have been made, there to remain without bail or mainprize for the space of three calendar months, unless such penalty shall be sooner paid."

Adjudications of misdemeanors to be certified to the sessions.

Sect. 17. "Every adjudication in any of the said misdemeanors shall be certified by the commissioner or justice of the peace making the same, to the next general or quarter sessions of the peace for the county, division, city, town corporate, or place in which such seizure shall be made, to be filed and entered amongst the records of the said session; and such conviction shall not be set aside or quashed for want of form, nor be liable to be removed by *certiorari*, advocation, or suspension into any other court, but shall be deemed and taken to be final, to all intents and purposes whatsoever."

One commissioner or justice may determine offences, where the value of the stores does not exceed 20*s*.

Sect. 18. "It shall and may be lawful to and for any principal officer or commissioner of the navy, ordnance, or victualling for the time being, or any justice of the peace for any county, division, city, town corporate, liberty, or place within this kingdom, to hear and determine any complaint against any person or persons (not being a contractor or contractors, or employed as aforesaid) for unlawfully selling or delivering, or causing or procuring to be sold or delivered, or for receiving or having in his, her, or their custody, possession, or keeping, or for concealing any stores of war, or naval, ordnance, or victualling stores or goods marked with such marks, respectively, as are hereinbefore mentioned, of any value, in the whole not exceeding 20*s*.; which said commissioner or justice respectively is hereby authorized and required, upon any information exhibited or complaint made in that behalf, at any time within three calendar months next after any such offence shall have been committed, to cause the party or parties accused to be apprehended and brought before him; or if he, she, or they shall have absconded, or cannot be found, then to be summoned to appear before such commissioner or justice, by a notice or summons left at his, her, or their last or usual place of abode; and also to cause the witnesses on either side to be summoned; and such commissioner or justice shall examine into the matter of fact, and upon due proof made thereof, either by the voluntary confession of the party or parties, or by the oath of one or more credible witness or witnesses (which oath the said commissioner or justice respectively is hereby authorized to administer), give judgment or sentence accordingly; and in case the party or parties accused shall be convicted of such offence, then it shall and may be lawful to and for such commissioner or justice of the peace respectively, to inflict a fine of 10*l*. upon him, her, or them, for such his, her, or their offence; which said fine so inflicted shall be divided and distributed, one moiety thereof to the informer or discoverer of the offence, and the other moiety thereof (the necessary charges for the recovery thereof being first deducted) to the treasurer of his majesty's navy or ordnance, as the case may be, to be by him applied in such manner as hereinbefore mentioned with respect to the produce of barges, boats, or other craft seized and sold under the authority of this act, and to award and issue out his warrant under his hand and seal for levying such fine so adjudged on the goods of the offender or offenders, and to cause sale to be made thereof for payment of such fine and the reasonable charges of distress, (to be judged of by such commissioner or justice respectively,) in case they shall not be redeemed within six days, rendering to the party the overplus, if any; and where sufficient goods of the party cannot be found to answer the said fine, to commit the said offender or offenders to the common gaol of the county, division, city, town corporate, liberty, or place, for the space of three calendar months, unless such fine shall be sooner paid, or in lieu of such fine, to cause such offender or offenders to be imprisoned and kept to

hard labour in the house of correction for the space of three calendar months, as to such commissioner or justice of the peace respectively shall be thought fit; and every such commissioner or justice shall cause the amount of every such last-mentioned moiety of fine which he shall so receive, and also the moiety of every sum arising from the sale of any barge, boat, or other craft sold under the authority of this act, and paid into his hands as aforesaid, to be paid into the hands of the said treasurer of the navy or ordnance, within thirty days after the expiration of the year in which such fines shall be received by him, or, in default thereof, such commissioner or justice respectively shall forfeit the sum of 50*l.*, to be recovered with double costs of suit, by any person or persons who shall sue for the same by action of debt, bill, plaint, or information, in any of his majesty's courts of record at Westminster, or court of Exchequer in Scotland, wherein no essoign, protection, or wager of law, nor more than one imparlance, shall be allowed; one moiety of which last-mentioned fine shall go to his majesty, his heirs and successors, and the other moiety thereof to him or them who shall sue for the same as aforesaid." 39 & 40 Geo. III. c. 89.

Sect. 19. "It shall and may be lawful to and for the said commissioner or justice before whom any person shall be convicted in a summary way as aforesaid (if he shall see cause), to mitigate and lessen any such before-mentioned fine of 10*l.*, to be inflicted in that behalf, as he shall think fit (the reasonable costs of the officers and informers, as well in making the discovery as in prosecuting the same, being always allowed over and above such mitigation and so as such mitigation do not reduce the fine to less than one moiety of the said sum of 10*l.*, over and above the said costs and charges; any thing contained in this act to the contrary thereof in anywise notwithstanding." Fines may be mitigated.

Sect. 20. "In case such commissioner or justice of the peace shall, upon the hearing and determining of such complaint as aforesaid, adjudge the offender or offenders, in lieu of the fine, to be imprisoned and kept to hard labour as aforesaid, that then the informer, or person or persons who shall have discovered such offender or offenders, shall have and receive, as a reward for such his, her, or their discovery, the sum of 5*l.* for every such offence so discovered, and the principal officers and commissioners of his majesty's navy, ordnance, or victualling, as the case may require, shall cause the said reward of 5*l.* to be paid by the treasurer of the navy or ordnance respectively for the time being, out of any public money in his hands, upon such informer or other person producing to them a certificate under the hand and seal of the commissioner or justice of the peace who shall have convicted such offender or offenders as aforesaid, certifying such conviction and the punishment which he hath inflicted upon the offender or offenders; and the name or names of the person or persons who, in his judgment, is entitled, and in what proportion or proportions, to such reward; which certificate the said commissioner or justice of the peace respectively is hereby required to give without fee or reward; and the money paid by any such treasurer on account of such last-mentioned rewards shall be allowed in his accounts, and he shall be discharged thereof accordingly; any law, custom, or usage to the contrary thereof in anywise notwithstanding: Provided also, that no such summary proceeding as before mentioned shall be had before any justice of the peace under the authority of this act, without the consent in writing of the principal officers or commissioners of his majesty's navy, ordnance, or victualling for the time being, or one of them, for that purpose first had and obtained; and that every adjudication or sentence to be had or given without such consent as aforesaid shall be null and void, to all intents and purposes whatsoever." If in lieu of a fine the offender be imprisoned, the informer to receive a reward of 5*l.*

Sect. 21. "If any person or persons shall find himself, herself, or themselves aggrieved by the judgment of any such commissioner or justice, touching or concerning any such stores as last aforesaid, under the value of 20*s.*, then he, she, or they shall or may, upon entering into a recognizance to his majesty, with one or more surety or sureties, to the satisfaction of such commissioner or justice, to the amount of treble the value of such Appeal.

30 & 40 Geo. III. c. 89.

fine, appeal to the justices of the peace at their next general quarter sessions of the peace for the county, division, city, town corporate, liberty, or place wherein the offence was committed, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment shall be affirmed, it shall and may be lawful for such justices of the peace to award the person or persons so appealing to pay such costs occasioned by such appeal as to them the said justices shall seem meet, and to enforce payment thereof, according to the course and practice of such court."

Conviction.

Sect. 22. "The commissioner or justice of the peace before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect, *mutatis mutandis;* which conviction shall be good and effectual, to all intents and purposes, without stating the case, or the facts or evidence, in any more particular manner; (that is to say,)

'*Be it remembered, that on the day of , in the year of our Lord , A. B., of , in the of , was convicted before me, C. D., one of the commissioners of his majesty's* [or, *one of his majesty's justices of the peace for the of* , as the case may be], *for that the said A. B., on the day of now last past, at the of , in the said of did* [here state the offence against the act], *contrary to the statute in such case made and provided.*

Given under my hand and seal, the day of , in the year of our Lord .'

Certiorari.

Which conviction the said commissioner or justice shall cause to be written fairly upon parchment or paper, and returned to the next general quarter sessions of the peace for the county, division, city, town corporate, liberty, or place where such conviction was made, to be filed by the clerk of the peace, and there to remain and be kept among the records of the same county, division, city, town corporate, liberty, or place; and the same shall not be removed by *certiorari*, advocation, or suspension, into any court whatsoever."

Witnesses not appearing.

Sect. 23. "If any person or persons shall be summoned as a witness or witnesses, to give evidence before such commissioner, or justice or justices of the peace, touching any of the matters relative to this act, either on the part of the prosecutor or the party or parties accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed by such commissioner or justice or justices of the peace before whom the seizure, complaint, or prosecution shall be depending, that then every such person shall forfeit for every such offence the sum of 10*l.*, to be recovered, levied, paid and applied, in such manner and by such means as is above directed with respect to fines on summary convictions."

Not to prevent offenders being prosecuted as receivers of stolen goods.

Sect. 24. "Nothing hereinbefore contained which gives to any commissioner or justice of the peace power or authority to hear and determine offences in a summary way, shall extend, or be deemed, construed, or taken to extend, to prevent the party or parties accused of selling or delivering, or of having in his, her, or their custody, possession, or keeping, or of receiving or concealing any of the stores marked as above mentioned, under the value of 20*s.*, from being prosecuted as receivers of stolen goods under this act, or for unlawfully having the same in his, her, or their custody, or concealing the same, under the said recited acts of the ninth and tenth years of the reign of king William the Third, the ninth year of the reign of king George the First, or the seventeenth year of the reign of king George the Second, in any court of record, oyer and terminer, or otherwise, as they might have been if no such power or authority had been given; or to take away from any person or court whatsoever, any power, right, jurisdiction, pre-eminence, or authority, which he or they, or any of them, ought lawfully to have had and enjoyed for the hearing and determining of such offences, in case no such power or authority to

hear and determine the same in a summary way had been given, so as that the same person shall not be punished twice for the same offence." 39 & 40 Geo. III. c. 89.

Sale by commissioners.

Sect. 25. "The said commissioners of the navy, ordnance, or victualling for the time being, may sell and dispose of any of the stores aforesaid so marked as aforesaid, as they did or might have done before the making of this act: and that such person or persons as heretofore have or shall hereafter buy any such stores or other stores so marked as aforesaid, of the said respective commissioners, may keep and enjoy the same without incurring the penalty of this act, or any law to the contrary whatsoever, upon producing a certificate or certificates, under the hand and seal of three or more of the said commissioners, that they bought such goods or stores from them at any time before they sold or delivered the same, or before the same were found in their custody, or a certificate from such person or persons as shall appear to have bought the said stores from them the said commissioners, that the stores so sold or delivered by them, or so found in their custody, were the stores or part of the stores so bought of the said commissioners as aforesaid; in which certificate or certificates, the quantities of such stores shall be expressed, and the time when and where bought of the said commissioners, who, or any three or more of them for the time being, and also the person or persons afterwards selling the same, are hereby empowered and directed from time to time to give such certificate to such person or persons as shall desire the same, and have bought and shall hereafter buy any of the aforesaid stores, within thirty days after the sale and delivery thereof."

Penalty for giving false certificates.

Sect. 26. "If any person or persons shall make, sign, or give any false certificate, bill of parcels, or other instrument, purporting the identity or the sale or disposal of any goods or stores as goods or stores so purchased of the said commissioners as aforesaid, or if any person or persons shall utter or publish any such false certificate, bill of parcels, or other instrument purporting as aforesaid, knowing the same to be false, every such offender, upon conviction thereof in due form of law, shall forfeit the sum of 200*l.*, and be further corporally punished, as by this act is directed with respect to persons having in their possession or concealing his majesty's warlike, naval, or ordnance stores, contrary to the said act of the ninth and tenth years of king William the Third; one moiety of which penalty shall be to his majesty, his heirs and successors, and the other moiety thereof, with full costs of suit, to the informer, to be recovered in such manner as the penalty of 200*l.*, inflicted by the said last-mentioned act, is by that act or any law now in force made recoverable."

Magistrates, &c., to have the protection afforded by the 24 Geo. II. c. 44 (*a*).

Sect. 28. "Every commissioner of the navy, ordnance, or victualling, acting in the execution of this act, shall have and be entitled to the benefit and protection given to the justices of the peace in and by an act of parliament made in the seventh year of the reign of the late king James the First, intituled 'An Act for Ease in pleading troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful execution of their Office;' and also in and by one other act of parliament, made in the twenty-first year of the reign of the said late king James, intituled 'An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other his Majesty's Officers, for the lawful Execution of their Office, made in the seventh Year of his Majesty's most happy Reign,' and also in and by one other act of parliament, made in the twenty-fourth year of the reign of his late majesty king George the Second, intituled 'An Act for rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others, acting in Obedience to their Warrants,' in as full and ample manner and form as if such commissioner had been a justice of the peace within the true intent and meaning of the said acts of parlia-

(*a*) See this enactment, *ante*, "*Justices*," Vol. III.

39 & 40 Geo. III c. 82.

ment, or any of them; and that all and every constable, headborough, or other peace-officer, or person acting under the warrant or authority of such commissioner in pursuance of this act, shall, besides the protection given to persons making seizures as above mentioned, have and be entitled to the full benefit and protection of the said several last mentioned acts of parliament, in the same manner to all intents and purposes as if he or they had acted under the warrant or authority of a justice of the peace within the meaning of the same acts."

Persons giving false evidence.

"Sect. 36. "If any person, upon examination upon oath or affirmation before any commissioner of the navy, ordnance, or victualling respectively, or before any justice of the peace in Great Britain, in any matter relating to the execution of this act, shall wilfully and corruptly give false evidence, or shall, in any information or deposition sworn, or affirmation taken in writing before any such commissioner or justice, wilfully and corruptly swear or affirm any matter or thing which shall be false or untrue, every such person so offending, and being thereof lawfully convicted, shall be and is hereby declared to be subject and liable to the like pains and penalties as any persons convicted of wilful and corrupt perjury are by any law now in force subjected and liable to."

Dealers in marine stores shall have their names painted on their storehouses (a).

By the 49 Geo. III. c. 122, s. 17. "All persons who shall trade or deal in buying and selling anchors, cables, sails, or old junk, old iron, or marine stores of any kind or description, shall have their names with the words 'dealer in marine stores,' painted distinctly in letters of not less than six inches in length upon the front of all their storehouses, warehouses, and other deposits for such goods; and in default of their so doing, they shall, on conviction before any justice or justices of the peace, or magistrate or magistrates of any jurisdiction where such storehouse, warehouse, and depot shall be, upon the oath of one credible witness, or on confession of the party offending, forfeit and pay a sum not exceeding 20*l.*, nor less than 10*l.*, one half of which penalty shall be paid to the informer, and the other half to the poor of the parish or township where such offence shall be committed; and that it shall not be lawful for such dealers or traders to cut up any cable, or any part of a cable, exceeding five fathoms in length; or uncant, untwine, or unlay the same into junk or paper-stuff, on any pretence whatsoever, without first obtaining a permit from some justice of the peace or magistrate residing near to the residence of such dealer, which permit shall not be granted unless an affidavit shall have been made that the cable so intended to be cut up had been *bonâ fide* purchased, and without fraud, by the party so intending to cut up the same, and without any knowledge or suspicion on his or her part that the same had been or were dishonestly come by; and in which affidavit shall also be specified the particular quality and description of such cable, and the name or names of the seller or sellers thereof, which affidavit shall be recited and set forth at length in the permit therenpon granted, on pain of forfeiting for the first offence any sum not exceeding 20*l.* nor less than 10*l.*, and for every second or further offence any sum not exceeding 50*l.* nor less than 20*l.*, to be recovered before any justice of the peace, and one half thereof to go to the informer, and the other half to the poor of the parish in which such offence shall have been committed."

Such dealers shall not cut up cables without a permit from a magistrate, to be granted on affidavit, &c.

Dealers shall keep an account of old stores bought by them.

Sect. 18. "For the more effectual prevention of such frauds, all dealers in such marine stores as aforesaid shall keep a book or books fairly written, in which entries shall be from time to time regularly made of all such old marine stores as shall be by them from time to time bought, containing a true account and description of the times when the same were so respectively bought by them, and of the names and places of abode of the respective sellers thereof: and before any person who shall obtain such permit for the cutting up of any such cable (as hereinbefore required to be obtained) shall proceed to cut up the same by virtue thereof, there shall

(a) See, also, the 59 Geo. III. c. 159, *post*; 1 & 2 Geo. IV. c. 75, s. 16, *post*, "*Wreck*," Vol. VI.

be published by the space of one week at least before the cutting up the same, one or more advertisement or advertisements in some public newspaper, printed nearest to the storehouse, warehouse, or depot where the articles shall be deposited, notifying that such party had obtained such permit for the purpose of cutting up such cable, and of such kind and quality as therein described, and also specifying the place where such articles shall be deposited; whereupon it shall be lawful for all and every person or persons who may have just cause to suspect that such articles are the property of such person or persons, and shall have verified upon oath the fact of such his, her, or their suspicion before any justice of the peace or magistrate residing near to the said storehouse, wharehouse, or depot, by warrant for that purpose thereupon granted, to require of and from such dealer who shall have so advertised, and shall be sworn to be suspected as aforesaid, the production and examination of the book or books of entries hereby required by him or her to be kept, and inspect and examine the cables described in such permit; and in case any such dealer, when so thereunto required as aforesaid, shall neglect or refuse to produce to the person named in such warrant as the person on whose oath the same shall have been obtained, the book or books containing the entries of such dealer so required to be made therein as aforesaid, or shall neglect to keep any such book or books in which entries containing accounts of the several particulars hereinbefore required to be entered shall be made, or to permit such inspection or examination as aforesaid, or shall, after obtaining such permit for the cutting up of any such cable, and before the cutting up of the same, neglect to publish such one or more advertisement or advertisements relative thereto as is hereinbefore directed and required, the dealer or dealers so offending in all or any of the particulars hereinbefore mentioned shall forfeit and pay for every such offence, being his, her, or their first offence, any sum not exceding 20*l.* nor less than 10*l.*, and for every second or third offence any sum not exceeding 50*l.* nor less than 20*l.*, one half of which penalty shall, on conviction before any justice of the peace or magistrate residing near as aforesaid, be paid to the informer, and the other half to the poor of the parish or township in which such offences shall be committed; and in case any of the penalties by this act imposed shall not be paid, with the charges incident to the conviction, immediately upon such conviction, the same shall and may be levied by warrant under the hand and seal of such justice of the peace or magistrate, upon the goods and chattels of any such offender or offenders; and in case no sufficient distress shall be found, then every such offender or offenders shall and may be committed by any such justice of the peace or magistrate as aforesaid, to gaol, in case of any first offence, for the space of six calendar months, and in case of any second or further offence, for the space of twelve calendar months, unless the said penalty and the charges shall be sooner paid."

49 Geo. III. c. 122.

Shall advertise before cutting up of cordage.

Inspection of such accounts may be demanded by parties interested.

Penalties on dealers for neglect.

The 21st section of this act relates to the power of appeal; see the enactment, *ante*, "*Cordage*," Vol. I.

By the 54 Geo. III. c. 60, after reciting that "the marks usually put to his majesty's cordage are frequently taken out of the same for the purpose of concealing his majesty's property therein; and it is expedient that other marks should be used in his majesty's cordage for the purpose of denoting his majesty's property therein;" it is enacted, "That from and after the passing of this act, all and every the pains, penalties, forfeitures, regulations, restrictions, powers, provisions, matters and things, in respect to the making, selling, delivering, receiving, having in possession, and concealing any cordage wrought either with a white thread laid the contrary way, or with a twine laid to the contrary way, mentioned and contained in 9 & 10 Will. III. c. 41, and also in 39 & 40 Geo. III. c. 89; or in any other act or acts of parliament; and shall extend to the making, selling, delivering, receiving, having in possession, and concealing any cordage wrought with one or more worsted threads, as fully and effectually, to all intents and purposes, as if the same several pains, penalties, forfeitures,

Provisions of the 9 & 10 Will. III. c. 41, and 39 & 40 Geo. III. c. 89, extended to cordage worked with worsted threads.

54 Geo. III. c. 60.

regulations, restrictions, powers, provisions, matters, and things were herein and hereby repeated and re-enacted in respect to such last-mentioned cordage: Provided always, that nothing herein contained shall extend, or be construed to extend, to repeal any of the statutes now in force, or any of the clauses, matters, and things, therein contained, in respect to cordage wrought either with a white thread laid the contrary way, or with a twine laid to the contrary way, but that the same marks may be continued to be used to denote his majesty's property in such cordage, in the same manner as if this act had not been passed."

Persons prohibited from sweeping harbours for lost stores.

By the 54 Geo. III. c. 159, s. 10, all persons, except such as are duly licensed thereto by a commissioner of his majesty's navy, are prohibited from creeping or sweeping for anchors, cables, ropes, rope-yarns, or other stores, lost, or supposed to be lost, in harbours, &c., within certain prescribed limits, under a penalty of 10*l*.

Acts of 9 & 10 Will. III. c. 41; 9 Geo. I. c. 8; 17 Geo. II. c. 40; 40 Geo. III. c. 89; so far as relates to naval stores, shall extend to all public stores and to all persons intermeddling therewith, not authorized.

The 55 Geo. III. c. 127, recites the 9 & 10 Will. III. c. 41; 9 Geo. I. c. 8; 17 Geo. II. c. 40; 40 Geo. III. c. 89; 52 Geo. III. c. 12; 53 Geo. III. c. 126, and repeals the last-mentioned act, and enacts, "That from and after the passing of this act, not only the said recited act of the ninth and tenth year of the reign of king William the Third, but also the said several other acts of the ninth year of the reign of king George the First, the seventeenth year of the reign of king George the Second, and the fortieth year of the reign of his present majesty, hereinbefore recited, so far as the same severally relate to his majesty's naval, ordnance, and victualling stores, therein respectively mentioned, and all the pains, penalties, forfeitures, regulations, restrictions, powers, provisions, clauses, matters, and things therein respectively contained, relating to his majesty's naval, ordnance, and victualling stores, therein respectively mentioned, shall extend, and be construed to extend, to all public stores whatsoever, under the care, superintendence, or control, of any officer or person in the service of his majesty, his heirs or successors, or employed in any public department or office, either marked with the marks, or any of them, in the said recited acts, or any of them, specified, or with the broad arrow and the letters B. O., or with a crown and the broad arrow, or with his majesty's arms, or with the letters G. R., to denote the property of his majesty, his heirs or successors, therein, and to all and every person and persons not authorized by the proper officer or officers, person or persons, in his majesty's service, in that behalf so to do, using any such marks, or making any goods marked with such marks, or any of them, and to all and every person and persons, in whose custody, possession, or keeping, any such public stores, so marked as aforesaid, shall be found, or who shall willingly or knowingly receive or have in his, her, or their custody, possession, or keeping, or who shall conceal any such public stores so marked as aforesaid, unless such person or persons shall, upon his, her, or their trial, produce a certificate or certificates, under the hand or hands of the proper officer or officers, person or persons in his majesty's service, authorized to grant the same, of such and the like nature as the certificate, in the said recited acts of the ninth and tenth year of the reign of king William the Third, and fortieth year of the reign of his present majesty, mentioned, and to all and every person and persons who shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the said marks, or cause, procure, employ, or direct any other person or persons so to do, for the purpose of concealing the property of his majesty, his heirs or successors therein, as fully and effectually, to all intents and purposes, as if all the same several pains, penalties, forfeitures, regulations, restrictions, powers, provisions, clauses, matters, and things in the said several acts contained, so far as the same severally relate to his majesty's naval, ordnance, and victualling stores; and the punishment of persons, offending in manner therein mentioned, were herein and hereby severally repeated and re-enacted in respect to all other public stores whatsoever."

Principal officers

By the 56 Geo. III. c. 80, "from and after the passing of this act, it

shall and may be lawful to and for all and every, or any one of the principal officers and commissioners of his majesty's navy, resident on any foreign station, to grant certificates under his or their respective hand or hands, for any such stores or goods which shall hereafter be sold by, or by the order of any such principal officer or commissioner, at any such foreign station, of such and the same, or the like tenor and effect, and that the same certificates so to be granted as aforesaid shall be in all places of such and the same force and effect as certificates under the hands of three or more of the principal officers and commissioners of the navy in England are of, for any such stores or goods sold by or by the order of the said commissioners in England."

56 Geo. III. c. 80.

and commissioners of navy at foreign stations may grant certificates of stores sold by them.

Stray. *See "Estray,"* Vol. II.

Subornation of Perjury. *See ante, "Perjury."*

Subpoena. *See "Evidence,"* Vol. II. p. 417.

Summons.

Summons, when proper.

IN all legal proceedings, the person complained of ought to have notice of the charge laid against him, and to have an opportunity of being heard in his own defence, and there is no case of a judicial proceeding by which a man is to be deprived of any part of his property, without his having an opportunity of being heard. (*See per Bayley, Capel* v. *Child*, 2 *C. & J.* 579; *R.* v. *Benn*, 6 *T. R.* 198; *R.* v. *Justices of Stafford*, 5 *Nev. & M.* 94; 1 *H. & W.* 328; *Painter* v. *Liverpool Gas Company*, 6 *Nev. & M.* 736; 3 *Adol. & Ell.* 433. *S. C.*) Consequently, where a person is accused before the justices, they ought to summon the party to appear, or issue their warrant to bring him before them. The manner of conveying the parties is sometimes directed by the acts of parliament creating the respective offences, which, therefore, ought to be pursued accordingly. In other cases, where it is left discretionary in the justices, it seemeth most agreeable to the mildness of our laws to put the party to no more inconvenience than needs must; and therefore, where the case will bear it, a summons seems more apposite than a compulsory process. But, in cases of sureties of the peace, petty larcenies, and other felonies, and generally where the king is a party, and also in cases between party and party, where the body of the offender is liable, a warrant is the regular process, and not a summons. In some cases, a party may be apprehended without either a summons or warrant. *See "Arrest,"* Vol. I. See further, as to the necessity of a summons, and when it is dispensed with, *"Conviction,"* Vol. I.

Warrant, when proper.

Form and service of.

The *form* of the summons, as also the mode of *serving* it, and the consequences of defects, will be found noticed under *title "Conviction,"* Vol. I. In many instances the mode of service of a summons is pointed out by statute.

By one justice who is two empowered to determine the case.

By the 3 Geo. IV. c. 23, s 2, one justice, &c., may receive the original information, &c., where two or more justices are empowered to hear and determine.

Form of.

See forms of summonses, *title* "*Conviction*," Vol. I.

Sunday. *See* "*Lord's Day*," Vol. III.

Supremacy, *Oath of*. *See ante*, "*Oaths*," p. 251.

Surety of the Peace.

Surety of the peace.

OUT of the Latin word *pax*, the Normans formed their *paix*, and we (out of that) our *peace*. (*Lamb.* 5.)

Surety of the Peace is the acknowledging of a recognizance or bond to the queen, taken by a competent judge of record, for keeping the peace. (*Dalt. c.* 116.)

Who may take it.

And this surety of the peace every justice of the peace may take and command by a twofold authority: 1. As a minister, commanded thereto by a higher authority; as, when a writ of *supplicavit* directed out of the Chancery or Queen's Bench is delivered to him. 2. As a judge, and by virtue of his office, derived from his commission. (*Dalt. c.* 196.) And by the first clause of the commission, justices in session may take surety for the peace. (*Title* "*Justices*," Vol. III. pp. 984, 1009.)

I. *For what Cause Surety of the Peace shall be granted*, p. 1202.

II. *At whose Request granted*, p. 1204.

III. *Against whom granted*, p. 1204.

IV. *By whom, and in what Manner granted, and Form, &c. of Recognizance*, p. 1205.

V. *How the Peace-Warrant may be superseded*, p. 1208.

VI. *How executed*, p. 1209.

VII. *How Recognizance may be forfeited, and Proceedings thereon*, p. 1210.

VIII. *How discharged*, p. 1211.

I. For what Cause granted.

For what cause to be granted.

By the commission of the peace, justices of peace have power to cause to come before them, or any one of them, all those who, to any of the queen's people, concerning their bodies, or the firing of their houses, have

used threats, to find sufficient security for the peace, or their good behaviour towards the queen and her people; and if they shall refuse to find such security, to cause them in the queen's prisons to be safely kept until they shall find such security. *See* the form of the commission, *title* "*Justices*," Vol. III. p. 988.

1 *For what Cause granted.*

Upon which Mr. *Hawkins* observes, that it seemeth clear that, wherever a person has just cause to fear that another will burn his house, or do him a corporal hurt,—as, by killing or beating him, or that he will procure others to do him such mischief, he may demand the surety of the peace against such person; and that every justice of the peace is bound to grant it, upon the party's giving him satisfaction upon oath that he is actually under such fear, and that he has just cause to be so by reason of the other's having threatened to beat him, or laid in wait for that purpose; and that he doth not require it out of malice or for vexation. (1 *Haw. c.* 60, *s.* 6; *see Butt* v. *Conant*, 1 *B. & B.* 548; 4 *Moore*, 195, *S. C. the case a libel.*)

Fear of corporal hurt, or burning his house.

Also, it seems the better opinion, that he who is threatened to be imprisoned by another has a right to demand the surety of the peace: for every unlawful imprisonment is an assault and wrong to the person of a man. And the objection that one wrongfully imprisoned may recover damages in an action, and therefore needs not the surety of the peace, is as strong in the case of battery as imprisonment; and yet there is no doubt but that one threatened to be beaten may demand the surety of the peace. (1 *Haw. c.* 60, *s.* 7.)

Being threatened with imprisonment.

But, if the justice shall perceive that surety is demanded merely of *malice*, or for *vexation* only, without any just cause or fear, it seemeth he may safely deny it. (*Dalt. c.* 116.) *Implied* malice is no ground for granting the sureties: *direct* malice must be shown from particular facts. Also, if a man will require the peace, because he is at *variance* or in *suit* with his neighbour, it shall not be granted. (*Dalt. c.* 116.)

Where demanded through malice or vexation.

Also, Mr. *Lambard* says, he takes it to be somewhat clear that a justice may not by the commission award a precept of the peace in behalf of a man that will require it, because he feared that he will do harm to his *servants* or *cattle*. (*Lamb* 83.) And Mr. *Dalton* says, where a man is in fear that another will hurt his servants, or his cattle, or other goods, this surety of the peace shall not be granted by the justice. But, in this case, *Fitzherbert* saith, the party may have a special writ out of the Chancery directed to the sheriff, that he shall cause such person to find surety that he shall do no hurt or damage to the other man in his body, or to his servants or goods; and, if he will not find surety, that then he shall arrest and detain him in prison until he shall find surety. (*Dalt. c.* 116.) The reason why a man may not have sureties of the peace against another, for that he feareth he will do harm to his servants, seemeth to be, because it should be the servant's fear in such case, and not the master's; and the servant's own oath before the justice is necessary. And as to his goods, it seemeth clear that no sureties of the peace, ought to be granted in that case: for the recognizance of the peace, when taken, is only that the party shall keep the peace towards the king and all his liege people.

Fear of harm to his servants or cattle.

But Mr. *Dalton* says, that if a man shall threaten to hurt his wife or child, he thinks he may crave the peace at the justice's hands by the words of the commission, and that the justice ought to grant it. (*Dalt. c* 116.)

Threatening a man's wife or child.

Surety of the peace shall not be granted but where there is a fear of some present or future danger, and not merely for a battery or trespass that is past, or for any breach of the peace that is past: for this surety of the peace is only for the security of such as are in fear; but the party wronged may punish the offender by indictment, and the justice, if he see cause, may bind over the affrayer. (*Dalt. c.* 11.) That is, he may bind him over to answer unto the indictment.

Must be a fear of present or future danger.

The fear must arise from a threat, which must appear on the articles exhibited. (*Reg.* v. *Dunn*, 12 *Ad. & Ell.* 599; 4 *P. & D.* 415, *S. C.*)

There must be a threat.

1. *For what Cause granted.*

But the threat need not be in words it may be inferred by a course of conduct. (*Id.*)

But need not be in words.

Justice to decide as to sufficiency of threats.

If these be any ambiguity in the threats it is for the justice to give them such a construction as he thinks right, and his decision will in this respect be final. (*R.* v. *Tregarthen*, 5 *B. & Adol.* 678; 2 *Nev. & M.* 379, *S. C.*)

Q. B. will not interfere with decision.

The court of Queen's Bench will not interfere with his decision. Therefore, where a party gave information on oath before a magistrate, that from certain language used towards him he was in bodily fear from another, and the magistrate, upon hearing the complaint, required the latter to enter into recognizances to keep the peace: on motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrate to judge in what sense the language was used. (*Id.*)

If warranted by the oath.

But the oath on which the complaint is founded must be sufficient to warrant the decision. (*Reg.* v. *Dunn*, 12 *Ad. & Ell.* 599; 4 *P. & D.* 415, *S. C.*)

II. At whose Request granted.

May be demanded by any person.

As to this, Mr. *Hawkins* says, it seems to be agreed at this day, that all persons whatsoever, under the queen's protection, being of *sane* memory, whether they be natural and good subjects or aliens, or attainted of treason, &c., have a right to demand surety of the peace. And it is certain a wife may demand it against her husband threatening to beat her outrageously, and that a husband also may have it against his wife. (1 *Haw. c.* 60, *s.* 2; *Cowp.* 118.) Upon which Mr. *Crompton* observeth, that if the wife, in such case, cannot find sureties, she shall be committed; "and so (says he), a man may be rid of a shrew." (*Cromp.* 118) (*a*).

By wife.

By infant

And Mr. *Dalton* says, an infant under the age of fourteen years may demand this surety, and it shall be granted to him. (*Dalt. c.* 117.)

Lunatic.

But, as to a person of *non-sane* memory, Mr. *Dalton* says, this surety shall neither be granted against him nor to him, upon his own request; but, yet if there shall be cause, the justice ought to provide for his safety. (*Dalt. c.* 117.)

Peeress.

A peeress may demand surety of the peace against her husband. (*See* the cases of *Lord Vane*, 2 *Stra.* 1202; 13 *East*, 171, n. *S. C.*; *Marquis Carmarthen*, *Fort.* 359; *Earl Ferrers*, 1 *Burr.* 631, 703; *Earl Stamford*, *Cas. T. Hardw.* 74; *Lord Strathmore*, 1 *T. R.* 696; *Lord Howard*, 11 *Mod.* 109.)

III. Against whom granted.

Against whom.

There seems to be no doubt but that it ought, upon a just cause of complaint, to be granted by any justice of the peace against any person whomsoever, under the degree of nobility, being of sane memory, whether he be a magistrate or private person, and whether he be of full age or under age. But infants and *femes coverts* ought to find security by their friends, and not to be bound themselves. And the *safest* way of proceeding against a peer is by complaint to the court of Chancery or Queen's Bench. (1 *Haw. c.* 60, *s.* 3; 4 *Bla. Com.* 253. *See ante*, "*Peers.*")

Infants and *femes coverts.*

Peers.

(*a*) If the marriage be disputed, the court will order the recognizance to be worded so as not to admit the fact. And it was directed to be as follows: "*To keep the peace towards our sovereign lord the King, and all his liege people, and particularly towards* Hannah Penn, *who hath exhibited articles of the peace against him, the said* James Bambridge, *by the name of* Hannah Bambridge, *wife of him the said* James, *and that he shall not depart the court without leave,*" &c. (*R.* v. *Bambridge*, 2 *Str.* 1231.)

IV. By whom and how granted. Form, &c. of Recognizance.

4. By whom and how granted.

The courts of Chancery or Queen's Bench, or any justice or other conservator of the peace, may, it should seem, compel surety of the peace.

Who may compel it.

By Process out of Court of Queen's Bench or Chancery.]—As to granting process of the peace or good behaviour out of the Chancery or the Queen's Bench, it is enacted by the 21 Jac. I. c. 8, that it shall not be granted but upon motion in open court, and declaration in writing, and upon oath to be exhibited by the party desiring such process, of the causes for which such process shall be granted; the motion and declaration to be mentioned on the back of the writ. And if it shall afterwards appear that the causes are untrue, the court may order *costs* to the party grieved, and commit the offender till paid.

Process out of the Chancery or Q. B.

By Justice out of Sessions.]—If a person require immediate surety of the peace, and there be no sessions sitting, he should go before a justice or justices out of session, and make complaint on oath of the facts which require the surety. The complaint is usually in writing but not necessarily so. *See* Form, No. 1, *post*, 1221. As to what is a sufficient ground for requiring the surety, *see ante*, 1023. As to how far the defendant is at liberty to controvert the facts stated in the complaint, *see post*, 1207.

Before a single justice.

If the offending party be present, he may be required at once to enter into the requisite recognizance. If he be absent, the justice may make out a warrant to bring the party before himself or some other justice, or he may make it to bring the party before himself only: for he that maketh the warrant, for the most part hath the best knowledge of the matter, and therefore he is the fittest to do justice in the case. (5 *Rep.* 59.) Such warrant ought to be under seal, and to show the cause for which it is granted, and at whose suit, and that it may be directed to any indifferent person. (1 *Haw. c.* 60, *s.* 9.) As to the mode of executing the warrant, *see post*, 1209. *See* Form of warrant, No. 2, *post*, 1221.

Warrant of apprehension.

When the party cometh before the justice, he must offer sureties, or else the justice may commit him; for the justice needeth not to demand surety of him. (*Dalt. c.* 118, 169.) If he be absent, he cannot be committed without a warrant from some justice, in order to find sureties. (1 *Haw. c.* 60, *s.* 9.) *See* Forms of commitment, Nos 4, 5, *post*, 1222.

Commitment for not finding sureties.

The commitment may be to a house of correction as well as any other public gaol. (*Exp. Aston*, 13 *Law J., N. S.*; *M. C.* 52.)

The form of the recognizance, when taken before a justice upon a complaint below, is chiefly in the discretion of such justice, both as to the number and sufficiency of the sureties, and the largeness of the sum, and the continuance of the time for which the party shall be bound. *See* Form, No. 6, *post*, 1222. The form of a recognizance, when taken in pursuance of a writ of *supplicavit*, may be wholly governed by the direction of such writ.

Form of recognizance.

A recognizance to keep the peace as to any person, for a year, or for life, or without expressing any certain time (in which case it shall be intended for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace against all the queen's people in general, is good. (1 *Haw. c.* 60, *s.* 15; *Willes* v. *Bridger*, 2 *B. & Ald.* 278.)

However, it is the most usual way and in general best for justices out of sessions to bind the party to appear at the next sessions of the peace, and in the mean time to keep the peace as to the queen and all her liege people especially as to the party. (*Haw. c.* 60, *s.* 16.) And, though the recognizance should be removed by *certiorari*, it is no discharge of the obligation to appear. (2 *Haw. c.* 27.)

The court of Queen's Bench cannot interfere to reduce the amount of security which the magistrate requires. (*Rex* v. *Holloway*, 2 *Dowl.* 525.)

The fear of one cannot be the fear of another; and, therefore, every

Recognizance must be separate.

4. *By whom and how granted.*

recognizance must be separate. (*Pult.* 18.) But the court of Queen's Bench have allowed three women to file joint articles of the peace against three men. (*R.* v. *Nettle, &c.* 1 *Haw. P. C. c.* 60. *note, 7th edit.*)

How recognizance to be certified.

If it be taken by force of a writ of *supplicavit*, it needs not be certified till the justice receive a writ of *certiorari* to that purpose. But if it be taken upon a complaint below, it must be certified, sent, or brought to the next sessions, by force of the 3 Hen. VII. c. 1, that the party so bound may be called. (1 *Haw. c.* 60, *s.* 18.)

Insufficient sureties.

If the justice was deceived in the sufficiency of the sureties, he or any other justice may afterwards compel the party to find and put in other sufficient sureties, and may take a new recognizance for the same. (*Dalt. c.* 116, 119.)

Sureties dying.

If the sureties die, the party principal shall not be compelled to find new sureties, (*Dalt, c.* 119,) because their executors and administrators are liable.

Take surety on breach.

But if a man that was bound to keep the peace hath broken his bond, the justices ought, of discretion, to bind him anew. (*Lamb.* 78.)

But not until he be thereof convicted by due course of law; for, before conviction, he standeth indifferent whether he hath forfeited his recognizance or not. (*Cromp.* 125.)

Before the sessions.

By Sessions].—The party requiring the surety may at once apply to the court of sessions; and this is the most usual and best course, when the court is sitting.

Articles to be exhibited.

The application should be made upon articles verified on oath, showing the facts to warrant it. They should be exhibited on parchment. (*See* Form, No. 1, *post*, 1221.)

If the defendant be under recognizance to appear at the sessions, and application be made for an order of court for finding sureties, articles of the peace must be exhibited for that purpose, and that the practice that once existed of calling on the party at the following sessions, at which he is bound to appear to find sureties to the following sessions, and so on from sessions to sessions without any fresh complaint, is improper. (*See R.* v. *Bowes*, 1 *T. R.* 696; *post*, 1207.)

The articles are not sufficient unless they show a threat. (*R.* v. *Dunn*, 12 *Ad. & Ell.* 599; 4 *P. & D.* 415, *S. C.*) The threat need not be in words, but may be inferred from a course of conduct. That inference, however, must be drawn by the exhibitant himself; and, if he omit to state it in the articles, the court will not draw the inference. (*Id.*)

The exhibitant may allege, as part of his ground for apprehension, misconduct which has been the subject of former articles; although the accused party was committed on those articles for want of sureties, and discharged on *habeas corpus*; and a commitment on such new articles will not be contrary to stat. 31 Car. II. c. 2, s. 6. (*Id.*)

Where a party exhibiting articles of peace alleges, as the ground of fear, expressions in a letter, which he submits to the court for their construction, the court will not take the words into consideration, nor act upon the articles, unless the whole letter be set forth. (*Id.*)

Must be on oath

The articles must be verified by the *oath* of the exhibitant. (*R.* v. *Green*, 1 *Str.* 527; *Hilton* v. *Byron*, 12 *Mod.* 243.) Since the 9 Geo. IV. c. 32, and 3 & 4 Will. IV. c. 49, the solemn affirmation or declaration of a Quaker or Moravian would, it seems, suffice. And so of a separatist since the 3 & 4 Will. IV. c. 82. (*See* "*Oaths*." Vol. V.)

Where articles of the peace were returned by *certiorari*, and affidavits made by others than the exhibitant were subjoined on the same parchment, and the whole ended with the following jurat:—"Sworn by the several deponents." &c.:—It was held, that it sufficiently appeared that the articles had been exhibited on oath. (*R.* v. *Dunn*, *supra.*)

Affidavits in corroboration.

The articles may be supported by the corroboratory affidavits of third persons, and it is desirable so to support them. The affidavits ought not, it seems, to be entitled with names, &c., there being no previous cause in

court. (*R.* v. *Jones*, 1 *Str.* 704; *Bevan* v. *Bevan*, 3 *T. R.* 601; *King* v. *Cole*, 6 *T. R.* 642.) But affidavits in answer must. (*Id.*)

4. *By whom and how granted.*

A person demanding sureties of the peace (whether it be in the first instance before a single justice for immediate security, or by exhibiting articles before the justices in session) swears only to his own apprehensions, of which no other person can form an adequate judgment; from which it has been deduced by the judges, in many cases, as a general rule, that articles of the peace cannot be resisted on any ground, except by showing *direct* evidence of express malice; such as declarations to that effect; but not *inferred* malice, collected from general reasoning, or collateral circumstances; and, moreover, that wherever *particular facts* of violence are stated by the complainant, it is not permitted for the defendant to controvert them; for they must be taken to be true, till negatived through the medium of an appropriate prosecution. (*Reg.* v. *Dunn, supra*; *R.* v. *Stanhope*, 12 *Ad. & Ell.* 620, *n.*) And the 56 Geo. III. c. 100, s. 3, does not alter the practice in this respect. (*Id.*)

Affidavits in contradiction.

In *R.* v. *Doherty*, 13 *East*, 171, articles of the peace having been exhibited against the defendant by his wife, process issued thereon to enforce appearance; and when he appeared in court with his sureties, his counsel tendered affidavits to the court in contradiction of the facts sworn to in the articles, for the purpose of discharging them. But the court were satisfied they could not receive affidavits on the part of the defendant to contradict the truth of the articles exhibited against him, and prevent his giving surety. (*And See Lord Vane's Case*, 13 *East*, 171, *n.*)

But in *R.* v. *Bringloe*, 13 *East*, 174, *note*, though it was refused the defendant to controvert the facts, yet an explanation was allowed of such parts of the articles as were ambiguous.

And where an application was made to the court to enforce the subsequent process, and the articles manifestly appeared, from the corroborated affidavit of the defendant, to contain *malicious, voluntary, and gross perjury*, the court resisted the application and committed the offender. (*R.* v. *Parnell*, 2 *Burr.* 806; *R.* v. *Hon. P. Mackenzie*, 3 *Burr.* 1922.)

Where defendant already bound in recognizance to appear.

If the applicant has already been before a justice out of sessions, and the defendant has been bound by recognizance to appear before the justices in session, the court may make proclamation, that "if any man can show cause why the peace granted against *such a one* shall be continued, he shall speak;" and if no person come to demand the peace against him, or to show cause why it should be continued, then the court may discharge him. (*Dalt.* 120.)

Continuing the recognizance.

It is said, that if a man be bound to keep the peace, and especially if to keep it towards a certain person, though such person come not to desire the peace may be continued, yet the court, by their direction, may bind him over till the next session, and that may be to keep the peace against that person only, if they shall think fit: for it may be that the person who first craved the peace is sick, or otherwise prevented, so as he cannot come to that session to demand the continuance of the peace further. (*Talf. Dick. Sess.* 404.) The power of the sessions, however, to do this seems questionable. In *R.* v *Bowes*, where Lady *Strathmore* had exhibited articles of the peace against the defendant (her husband), the court of King's Bench ordered him to give security for fourteen years (it being a case of great outrage, and articles of the peace having been once before exhibited against him on a different complaint), himself in 10,000*l.* and two sureties in 5,000*l.* each The defendant afterwards applied to the court to reduce the time to one year instead of fourteen, and also to diminish the sum; and in the course of the argument in support of the rule, the defendant's counsel suggested that the court might take bail for one year at first, and afterwards renew that from year to year, if they should see occasion, without any fresh facts being exhibited against him. But though the court, on the particular circumstances of the case, ordered the time to be reduced to two years, because an information then depending for the outrage complained of would be disposed of within that time, when the court might

By whom and how granted.

deal with the defendant as they thought proper, in the event of his being convicted, Mr. J. *Ashhurst*, in answer to the suggestion at the bar, that new bail might be required of the defendant at the end of the first year on the original complaint, said, "I very much doubt whether we have such a power. It has been admitted that there never was any instance of the kind; and I confess I should be very loath to establish such a precedent." (*R.* v. *Bowes*, 1 *T. R.* 700.)

Motion to receive articles.

If the applicant appear, he may then move the court to receive articles of the peace against the offender, (with which articles ready drawn on parchment (*see* Form, No. 10, *post*, 1224,) he should come prepared, in order that they may be delivered to the clerk of the peace,) and further, to bind him by recognizance to the next session; and so on from session to session so long as he shall be able to make it appear that his reasonable apprehensions continue. Or the justices may bind him for a certain definite period, without reference to any succeeding session, at their discretion, as we have just seen the individual justice might have done in the first instance. (*Talf. Dick. Sess.* 405.)

The recognizance.

Where parties reside at a distance.

The court will not in general receive articles of the peace, if the parties live at a distance in the country, unless they have previously made application to a justice in the neighbourhood, and he has improperly refused to receive them. (*R.* v. *Waite*, 2 *Burr.* 780.)

And where articles of the peace were exhibited, and it appeared that the facts charged were done at Portsmouth, the court ordered an indorsement to be made upon the attachment of the peace, authorizing and directing any justice in that county to take the security there, specifying the particular sums wherein the principals and also their sureties should be bound. (*Hutt's case*, 1 *Bla. Rep.* 233; 2 *Burr.* 1039, *S. C.*)

On an affidavit that the defendant was seventy years of age, and unable to travel, a *mandamus* was granted to three justices in Brecon to take security on articles of the peace exhibited in the King's Bench. (*R.* v. *Lewis*, 2 *Str.* 935.)

Refusal to enter into recognizance.

If the defendant refuse or is not prepared to enter into the recognizance, he may be committed. (*Ante*, p. 1205.)

V. How the Peace-Warrant may be superseded.

Finding sureties before arrest.

It is said, that if one who fears that the surety of the peace will be demanded against him, find sureties before any justice of the same county, either before or after a warrant is issued against him, he may have a *supersedeas* from such justice, which shall discharge him from arrest from any other justice at the suit of the same party, for whose security he has given such surety. (1 *Haw. c.* 60, *s.* 14.) In which *supersedeas* it is not necessary to name either the sureties or the sums in which they are bound; but yet it is the better form to express them both. (*Dalt. c.* 118.) If a warrant be issued instead of this *supersedeas*, it is usual in practice for the defendant to obtain a note or order from the justice, to the like effect as the *supersedeas*, directed to the constable to discharge the defendant.

After arrest.

If the defendant be in prison under a commitment for want of sureties at the time he enters into the recognizance, then the justice must issue a *liberate* to the gaoler to discharge him.

Supersedeas in the Chancery or Queen's Bench.

Also, it is said that an appearance upon a recognizance for the peace may be superseded, by finding sureties in the Chancery or Queen's Bench, and purchasing a writ, testifying the same; but this practice having been often abused it was enacted, by the 21 Jac. I. c. 8, that no writs of *supersedeas* shall be granted out of the Chancery or King's Bench but upon motion in open court, and on such sufficient sureties as shall appear on oath to the court, to be assessed in the subsidy-book at 5*l.* lands, or 10*l.* in goods; and unless it shall also first appear to the court, that the process of the peace or good behaviour is prosecuted against him, desiring such *supersedeas*

bonâ fide, by some party grieved, in that court out of which the *supersedeas* is desired to be awarded. (1 *Haw. c.* 60, *s.* 14.)

§ 6. *How the Warrant shall be executed.*

VI. How the Warrant shall be executed

As to the execution of warrants in general, *post*, "*Warrant*," Vol. VI.

It can be executed only by the persons to whom it is directed, or some of them, unless it be directed to the sheriff, who may, either by parole or by precept in writing, authorize an officer sworn and known to serve it, but cannot empower any other person without a precept in writing. (1 *Haw. c.* 60, *s.* 11.)

By whom to be executed.

Where a person, authorized to arrest another who is sheltered in a house, is denied quietly to enter it, in order to take him, it seems generally to be agreed that he may justify breaking open the doors, (among other instances there stated.) upon a *capias* from the King's Bench or Chancery, to compel a man to find sureties for the peace or good behaviour, or even upon a warrant from a justice of the peace for such purpose. (2 *Haw. c.* 14, *s.* 2.)

Breaking open doors.

But no one can justify the breaking open another's doors to make an arrest, unless he first signify to those in the house the cause of his coming, and request them to give him admittance. (2 *Haw.* c. 14, s. 1. *See title* "*Warrant*," Vol. VI.)

If the warrant specially direct that the party shall be brought before the justice who made it, the officer ought not to carry him before any other; but if the warrant be general, to bring him before any justice of such place, the officer has the election to bring him before what justice he pleaseth, and may carry him to prison for refusing to find surety before such justice. (1 *Haw. c.* 60, *s.* 13.)

What justice to be carried before.

If the warrant be in the common form, directing the officer to cause the party complained of to come before a justice to find sufficient surety, and if he shall refuse so to do, to convey him immediately to prison, without expecting any further warrant, until he shall willingly do the same, the officer who serves it, before he makes any arrest, ought first to require the party to go with him, and find sureties according to the purport of the warrant; but upon refusal to do either, that is, either to go before the justice or to find sureties, he may carry him to the gaol by force of the same warrant, without more (1 *Haw. c.* 60, *s.* 12; *Dalt. c.* 118.)

Whether he may be carried to prison without any further warrant.

And yet the constable or officer may bring him, in that case, before the justice; and if he refuse there to give sureties, he may commit him without further warrant or *mittimus*. (2 *Hale*, 112.)

Nevertheless, notwithstanding these great authorities, it may not be convenient for the justice to leave so much to the constable's judgment as to determine what shall or shall not be deemed a refusal to find such sureties; for that the constable is constituted a judge in such case by no law. And much less doth it seem advisable to require in the warrant, as is usual, that the constable shall carry the party to gaol, if he shall refuse to find *sufficient* sureties. It doth not appear how the constable can any way be deemed a competent judge of that; for it is certain that he cannot administer an oath to such sureties or others, whereby to inform himself of such sufficiency.

Best not to leave the proceeding to the judgment of constable.

If the officer do arrest the party, and do not carry him before the justice to find sureties; or, upon the refusal of the party, if the officer shall arrest him and do not carry him to the gaol; in both these cases the officer is punishable by the justices for this neglect, by indictment and fine at their sessions. And also the party arrested may have his action of false imprisonment for the arrest; for where the officer doth not pursue the effect of his warrant, his warrant will not excuse him of that which he hath done. (*Dalt. c.* 118.)

7. How Recognizance may be forfeited, and Proceedings thereon.

VII. How Recognizance may be forfeited, and Proceedings thereon.

What a forfeiture.

There are divers things which may be done against the peace and divers offences for which an indictment against the peace will lie, and yet the committing or doing such offence or act shall be no forfeiture of the recognizance for the peace; for that the act that shall cause a forfeiture of such recognizance must be done or intended unto the person as is aforesaid, or in terror of the people. Therefore to enter into lands where he ought to bring his action; or to disseise another of his lands; or to enter into lands or tenements with force, being without offer of violence to any man's person, and without public terror; or to do a trespass in another man's corn or grass, or to take away another man's goods wrongfully, so it be not from his person; or to steal another man's horse, or other goods feloniously, being not from his person: all these, and the like, are breaches of the peace, and yet these will make no breach of this recognizance, nor breach of the peace within the meaning of the commission of the peace. (*Dalt. c.* 121.)

But the recognizance is forfeited if the party make default of appearance, and the same default shall be recorded. (3 Hen. VII. c. 1.)

However, if the party have any excuse for his not appearing, it seems that the sessions are not bound peremptorily to record his default, but may equitably consider of the reasonableness of such excuse. (1 *Haw. c.* 60, *s.* 18.)

Sickness of party.

And Mr. *Dalton* says, in case of the sickness of the party, so that he cannot appear, he has known that the justices, upon due proof thereof, have forborne to certify or record such forfeiture or default; and that they have taken sureties for the peace of some friends of his present in court, until the next sessions; for that the principal intent of the recognizance was but the preservation of the peace. But he queries how this is warrantable by their oath. (*Dalt. c.* 120.)

Actual violence.

Also, there is no doubt but that it may be forfeited by any actual violence to the person of another, whether it be done by the party himself, or by others through his procurement: as manslaughter, rape, robbery, unlawful imprisonment, and the like. (1 *Haw. c.* 60, *s.* 20.)

Threatening words.

Also, it hath been holden, that it may be forfeited by any treason against the king's person, and also by any unlawful assembly *in terrorem populi*, and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his presence threatening to beat him. (1 *Haw. c.* 60, *s.* 21.)

Otherwise it is, if the party be absent; and yet, if the party so bound shall threaten to kill or beat a person who is absent, and after shall lie in wait for him to kill or beat him, this is a forfeiture of the recognizance. (*Dalt. c.* 121.)

However, it seems that it shall not be forfeited by bare words of heat and choler, as calling a man a knave, teller of lies, rascal, or drunkard; for though such words may provoke a choleric man to break the peace, yet they do not directly challenge him to it, nor does it appear that the speaker designed to carry his resentment any farther; and it hath been said that even a recognizance for the good behaviour shall not be forfeited for such words; from whence it follows, *à fortiori*, that a recognizance for the peace shall not. (1 *Haw. c.* 60, *s.* 22.)

An actual assault in some cases does not amount to a forfeiture.

Also, there are some actual assaults on the person of another, which do not amount to a forfeiture of such recognizance: as if an officer, having a warrant against one who will not suffer himself to be arrested, beat, or wound him in the attempt to take him; or if a parent in a reasonable manner chastise his child; or a master his servant, being actually in his service at the time; or a schoolmaster his scholar; or a gaoler his prisoner, or even a husband his wife, as some say; or if one confine a friend who is mad, and bind and beat him, in such a manner as is proper in such cir-

cumstances; or if a man gently lay his hands upon another, and thereby stay him from inciting a dog against a third person; or if a man beat another (without wounding him, or throwing at him a dangerous weapon,) who wrongfully endeavours with violence to dispossess him of his lands or goods, or the goods of another delivered to him to be kept, and will not desist upon his laying his hands gently on him, and disturbing him; or if a man beat, or (as some say) wound or maim one who makes an assault upon his person or that of his wife, parent, child, or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attemps to kill any stranger; or if a man even threaten to kill one who puts him in fear of death, in such a place where he cannot safely fly from him; or if one imprison those whom he sees fighting, till the heat is over. (1 *Haw.* c. 60, *s.* 23, 24.)

7. How Recognizance may be forfeited, and Proceedings thereon.

As to the proceedings on a forfeited recognizance, *see* "*Fines*," *&c.* Vol. III.

Proceedings on forfeited recognizance.

VIII. How Recognizance may be Discharged.

He who is bound to the peace, and to appear at a certain day, must appear at that day and record his appearance, although he who craved the peace cometh not to desire that it may be continued; otherwise the recognizance cannot be discharged. (*Dalt.* c. 120.)

Discharged on appearance.

If the recognizance be made to keep the peace generally, without any time or day limited, it shall be construed to be during the party's life; and this the justice may do upon reasonable cause: but if such surety be so taken during the offender's life, neither the king, nor the justice, nor the party, can release or discharge it; and, therefore, the justice must be well advised how he granteth such surety. (*Dalt.* c. 119.)

But it seems to be agreed, that it may be discharged by the death or demise of the queen in whose reign it was taken, or of the principal party who was bound thereby, if it were not forfeited before. (1 *Haw.* c. 60, *s.* 17.)

By the death of queen.

Also it hath been holden, that it may be discharged by the release of the party at whose complaint it was taken, being certified together with it; but this may justly be questioned, because the recognizance is not to the subject, but to the queen, and consequently cannot be discharged by the subject, who is not a party to it: however, such a release will be a good inducement to the court to which such a recognizance shall be certified, to discharge it. (*Id.*)

Or the release of the party.

It is certain that such a recognizance cannot be pardoned or released by the queen before it be broken, because the subject hath a kind of interest in it; but being forfeited, then the queen and no other, may release and pardon the forfeiture. (*Id.*)

How pardoned by queen.

And it is said that the sureties are not discharged by their death, but that their executors continue to be bound as their testators were. (1 *Haw.* c. 60, *s.* 17; *Dalt.* c. 120, *ante*, 1206.)

Death of sureties.

Likewise, if the party be imprisoned for default of sureties, and after he that demandeth the peace against him happen to die, it seemeth the justice may make his *liberate* or warrant for the delivery of such prisoner; for, after such death, there seemeth no cause to continue the other in prison. Also, any justice may, upon the offer of such prisoner, take surety of him for the peace, and may thereupon deliver him. (*Dalt.* c. 118.)

Party demanding sureties dying.

Where the sessions, upon articles of the peace being exhibited, have ordered sureties to be found, and committed the accused party for want of them, their judgment is not final: but the court of Q. B. on *habeas corpus* and *certiorari* will examine the articles, and, if they are on the face of them insufficient, supersede the order of sessions as made without jurisdiction, and discharge the prisoner. (*R.* v. *Dunn*, 12 *Ad.* & *Ell.* 599; 4 *P.* & *D.* 415, *S. C.*)

By court of Queen's Bench on *habeas* or *certiorari*.

But the court will not hear affidavits controverting the facts alleged in

8. *How Recognizance may be discharged.*

the articles of the peace. (*Ib.*; *S. P. Reg.* v. *Stanhope*, 12 *Ad. & E.* 620, *n.*) And the 56 Geo. III. c. 100, s. 3, does not alter the practice in this respect. (*Id.*)

A party gave information on oath before a magistrate, that from certain language used towards him he was in bodily fear from another, and the magistrate upon hearing the complaint required the latter to enter into recognizances to keep the peace. On motion to discharge the recognizances, on the ground that the language was used in a metaphorical sense only, the court refused to interfere, because it was for the magistrates to judge in what sense the language was used. (*Rex.* v. *Tregarthen*, 5 *B. & Adol.* 678; 2 *Nev. & M.* 379, *S. C.*)

Surety for the Behaviour.

Good behaviour includeth the peace.

A MAN may be compelled to find sureties both for the good behaviour and for the peace; and yet the good behaviour includeth the peace; and he that is bound to the good behaviour is therein also bound to the peace. (*Dalt. c.* 122.)

This surety for the good behaviour being of near affinity to surety for the peace, both as to the manner in which it is to be taken, superseded, and discharged, it seemeth not to require a particular consideration, save only as to these two points:

I. *For what Misbehaviour it is to be required*, p. 1212.

II. *For what it shall be forfeited*, p. 1220.

III. *Forms, List of*, p. 1220.

I. For what Misbehaviour it is to be required.

For what misbehaviour it is to be required.

It doth not appear that the conservators of the peace at common law had any power as touching the good behaviour, further than as it had a relation to the peace; and not as it is contradistinguished from it. And it seemeth that the power which the justices of the peace do exercise at this day, in relation thereto, doth solely depend upon the commission of the peace, and the statute of the 34 Edw. III. c. 1. (Except in some special instances, wherein the power of binding to the good behaviour is given to them by particular statutes, which pertain not to this general title.)

Power given to justices by the commission.

The words in the commission are these: "We have assigned you jointly and severally, and every one of you, our justices, to keep our peace, and to cause to come before you, or any one of you, all those who to any one or more of our people concerning their bodies, or the firing their houses, have used threats; to find sufficient security for the peace or their good behaviour towards us and our people; and if they shall refuse to find such security, then them in our prisons, until they shall find such security, to cause to be safely kept."

Power given by statute.

The 34 Edw. III. c. 1, as to this matter, runs thus: "In every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most worthy in the county, with some learned in the law; and they shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take, and chastise them according to their

trespass or offence; and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; and to take and arrest all those that they may find, by indictment, or by suspicion, and to put them in prison; and to take of all them that be not of good fame, where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people, and the other duly to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor others passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders."

1. *For what Misbehaviour it is to be required.*

This statute seems to have had in view chiefly the disorders to which the country was then liable, from great numbers of disbanded soldiers, who having served abroad in the wars of that victorious king, were grown strangers to industry, and were rather inclined to live upon rapine and spoil. (*Barl* 524.)

But whatever the natural and obvious sense of it may be when compared with the history and circumstances of those times, it is certain that it hath been carried much further by construction, and the purport of it hath been extended by degrees, until at length there is scarcely any other statute which hath received such a largeness of interpretation.

Observations of learned men on the subject.

And that I may proceed with clearness in a matter so essential to the office of a justice of the peace, I will set down the several expositions which have been given of this statute from time to time by learned men, and then raise such observations thereupon as the subject will naturally suggest.

Surety of good behaviour relates to matters concerning the peace.

The first unfolding of the sense of this statute which has occurred, was in the case of Sir *Richard Croftes* and Sir *Richard Corbet*, in the second year of the reign of king Henry VII., wherein it was resolved by all the judges, for that purpose assembled, that he who is bound to the good behaviour ought not to do any thing which shall be cause of breach of the peace, or to put the people in fear, dread, or trouble: and so shall be intended of all things which concern the peace: but not in misdoing of other things which touch not the peace. Yet a diversity was observed between a breach of the peace and a breach of the good behaviour, for the peace is not broken without an affray or battery, but the good behaviour may be forfeited by the number of people a man has, and by their harness, or weapons, and the like, although they break not the peace. (2 Hen. VII. c. 2.)

May be had of persons frequenting bawdy-houses.

The second instance, and upon which much stress hath been laid was in the 13th year of the same king. In trespass of assault, battery, and imprisonment at D., the defendant saith that one *Alice B.* had a house in the same town, and kept there suspicious people, to wit, of common bawdry, and that the plaintiff oftentimes resorted to the same house suspiciously with women of bad fame and name, whereby the constable of the same town required the defendant to aid him to arrest the plaintiff, to find surety of his good behaviour; whereby the defendant came with the said constable at the hour of twelve in the night, and him found suspiciously in the same place; whereupon he took him and put him in ward; and it was holden by all the justices to be a good justification; for they said, that it is lawful for every constable to take suspected persons, which wake in the night and sleep in the day, or that keep suspicious company. (13 Hen. VII. c. 10.)

Opinion of Fitzherbert that it may be taken by one justice only.

In the next place, Sir *Anthony Fitzherbert*, who lived in the reign of king Henry VIII., saith, that it seemeth that one justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may: and the words of the statute of the 34 Edw. III. are to the same effect. Otherwise, he says, damage

I. *For what Misbehaviour it is to be required.*

may happen to some of the king's subjects, if the party be not attached, before that two justices have made the precept; yet, he says, the common usage is, to make such precept of the good behaviour in the name of two justices, and it is good to observe this direction. (*Fitz.* 7; *see Cromp.* 122, 126.)

Abusive words and common trespass not a breach of recognizance.

In the next place, it is proper to take notice of a case adjudged in the court of Queen's Bench, in the 30th of queen Elizabeth, reported by Lord *Coke*, 4 *Inst* 181, which was thus:—At the sessions at Bridgewater, in the county of Somerset, one *William King* with sureties was bound by recognizance to appear at the next general sessions of the peace in the same county, and in the mean time to be of the good behaviour towards the queen and all her people. And after, at the next sessions, *William King* appeared, and was indicted for slanderous words spoken since his binding, to wit, for saying at one time to *Edward Kyrton*, esq., "*Thou art a pelter, thou art a liar, and hast told my lord lies.*" And he was further indicted, that since the said recognizance, "*the close of one* John Wick *with force and arms he broke and entered, and the cattle of the said* John *depasturing in the said close unlawfully vexed and chased.*" And afterwards, at another time, he said to the said *Kyrton*, "*Thou art a drunken knave.*" Which indictment was removed into the Queen's Bench. And hereupon it was debated divers times, both at the bar and the bench, whether, admitting all that is contained in the indictment to be true, anything therein was, in judgment of law, a breach of the said recognizance. And it was resolved, that neither any of the words, nor the trespass, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace; for though the said words, "*Thou art a liar, thou art a drunken knave,*" are provocations, yet they tend not immediately to the breach of the peace; as if *William King* had challenged *Kyrton* to fight with him, or had threatened to beat or wound him, or the like; these tend immediately to the breach of the peace, and are therefore breaches of the recognizance of the good behaviour. And this diversity (Ld. *Coke* says) was justly collected upon the coherence and context of the statute of the 34 Edw. III., whereby justices are assigned for keeping the peace, and to restrain the offenders, rioters, and all other barrators, and to chastise them according to their trespass and offence; and to inquire of pillors and robbers in the parts beyond the seas, and be now come again, and go wandering, and will not labour. And thus much for the punishment of offences against the peace after they be done. Then followeth an express authority given to justices, for prevention of such offences before they be done, namely, "*and take of all them that be not of good fame*" (that is, that be defamed and justly suspected that they intend to break the peace), "*where they shall be found, sufficient surety and mainprize of their good behaviour towards the king and his people*" (which must concern the king's peace, as is also provided by the words subsequent), "*to the intent that the people be not by such rioters troubled or endamaged, nor the peace blemished, nor merchants nor others passing by the highways disturbed, nor put in peril that may happen of such offenders.*" And as for the trespass: although every wrongful trespass is by force and arms, and against the peace, yet these are not taken to be such as shall make a breach of the good behaviour.

Opinion of Lambard.

After this, Mr. *Lambard*, who wrote towards the beginning of the reign of king James the first, saith thus:—*Surety of the good abearing is of great affinity with that of the peace, as being provided for preservation of the peace, as that other is; for in the commission of the peace they are both conveyed under one tract of speech, against such as threaten to hurt men's bodies, or fire their houses; which things* (he says) *are now commonly prevented by surety of the peace only.* (*Lamb.* 115.)

Of whom surety may be required.

And in the 2 Hen. VII. c. 2 (above recited), the surety of the good abearing is set forth to rest in this point chiefly, that a man do nothing that may be cause of a breach of the peace; and that it doth not consist in the observation of things that concern not the peace; and that it should differ from surety of the peace in this, that where the peace is not broken

without an affray, or battery, or such like, the surety may be broken by the number of a man's company, or by his or their weapons or harness.

1. *For what Misbehaviour it is to be required.*

And herewithal (he says) do also agree certain precedents in the Queen's Bench.

But all this notwithstanding, he thinks that a man may reasonably affirm, that the surety of good abearing should not be restrained to so narrow bounds.

In proof of which, he proceeds to comment on the above-mentioned statute of the 34 Edw. III. enabling the keepers of the peace "*to take of them all that be not of good fame, where they shall be found, sufficient surety and mainprize of their good abearing towards the king and his people;*" so that, if a man be defamed, he may, by virtue hereof, be bound to his good behaviour at the discretion of the justices. Now, the doubt resteth in this—to understand concerning what matters this defamation must be: and this (he thinks) may be partly gathered out of the said statute; for after it hath first given power to the wardens of the peace to arrest and chastise offenders (that is to say, against the peace, rioters, and barrators), then it willeth them to, "*inquire of such as, having been robbers beyond the sea, were come over hither, and would not labour as they were wont;*" and, lastly, it authorizes them "*to take surety of the good behaviour of such as be defamed,*" namely, for any of those former offences; for so it standeth well together that they should both punish such as have already so offended, and shall also provide that others shall not likewise offend.

On sufficient cause.

But he says, the further this bond of the good abearing doth extend the more regard there ought to be taken in the awarding of it; and therefore (says he) although the justices have power to grant it, either by their own discretion or upon the complaint of others, even as they may that of the peace, yet I wish rather that they do not command it but only upon sufficient cause seen to themselves, or upon the complaint of other very honest and credible persons.

One justice may take the surety.

And then being about to set forth the form of a warrant, and of a recognizance for the good behaviour, he says, "And here, forasmuch as one justice alone, and out of sessions, may both, by the first clause of the commission, and also by the opinion of *Fitzherbert*, grant this surety of the good abearing (although the common practice be, that two such justices do join in that doing, whereof also *Fitzherbert* hath very good liking), I will not stick to set forth the common forms, as well of the precept as of the recognizance for the same, wherein if I shall use the names of two justices, you must take that to be done according to the common fashion and not of any necessity in law. For as I would more gladly use the assistance of a fellow-justice in this behalf, if I may conveniently have it, so if that may not be gotten, I would not greatly fear, when good cause shall require, to undertake the thing myself alone."

For immoral practices.

"And besides this," he says, "you may see admitted by the opinion of the court, 13 Hen. VII., that if a man in the night season haunt a house that is suspected for bawdry, or use suspicious company, then may the constable arrest him to find surety for his good abearing; for bawdry is not merely a spiritual offence, but mixed and sounding somewhat against the peace of the land."

"And, therefore," says he, "it shall not be amiss at this day, in my slender opinion, to grant surety of the good abearing against him that is suspected to have begotten a bastard child, to the end that he may be forthcoming when it shall be born; for otherwise there will be no putative father found, when the justices shall, after the birth, come to take order for his punishment," (*Lamb.* 119.)

Opinion of Pulton.

In the next place, Mr. *Pulton*, who lived about the same time with Mr. *Lambard*, writeth thus:—"The surety of the good abearing is ordained for the preservation of the peace, and it doth differ in nothing from that of the peace, but that there is more difficulty in the performance of it, and the party bound may sooner slide into the peril and danger of it. The surety of good abearing is most commonly granted in open sessions, or by two or

1. *For what Misbehaviour it is to be required.*

three justices; or, upon a *supplicavit*, and great cause shown and proved, it is granted in the Chancery or Queen's Bench. And though one justice alone may grant it if he will, yet it is seldom done so, unless it be to prevent some great, sudden, and imminent enormity or danger. The surety of the peace is most times taken at the request of one for the preservation of the peace chiefly against one. But the surety for the good abearing is oftentimes granted at the suit of divers, and those must be men of credit, and to provide for the safety of many; for the effect and purport thereof is, that the party bound shall demean himself well in his port, behaviour, and company, and do nothing that may be the cause of breach of the peace, or in putting the people in fear or trouble; and it is chiefly granted against common barrators, common rioters, common quarrellers, common peace-breakers, and persons greatly defamed for resorting to houses suspected to maintain incontinency or adultery, and against those that be generally feared to be robbers or spoilers of the queen's people, or which do endamage, disturb, trouble, or put in peril passengers by the way." (*Pult.* 18.)

Nature of surety.

Opinion of Dalton.

Afterwards, Mr. *Dalton*, who wrote towards the latter end of the reign of king James the First, says, "The surety of good behaviour is of great affinity with that of the peace, and is provided chiefly for the preservation of the peace; and is most commonly granted either in the open sessions, or by two or three justices out of sessions. Yet by the words of the commission, as also by the common opinion of the learned, one justice alone out of sessions may grant this surety of the good behaviour. But this is not usual, unless it be to prevent some great and sudden danger, especially against a man that is of any good estate, carriage, or report. And it shall be good discretion in the justices that they do not grant it, but either upon sufficient cause seen to themselves, or upon the suit or complaint of others, and the same very honest and credible persons." (*Dalt. c.* 123.)

Opinion of Hawkins.

In the next place, Mr. *Hawkins*, who wrote in the reign of king George the First, saith thus:—"There seem to have been some opinions that the statute, speaking of those that be 'not of good fame,' means only such as are defamed and justly suspected that they intend to break the peace, and that it does not any way extend to those who are guilty of other misbehaviours not relating to the peace. But this seems much too narrow a construction; since the above-mentioned expression of persons of 'evil fame,' in common understanding, as properly includes persons of scandalous behaviour in other respects, as those who by their quarrelsome behaviour give just suspicion of their readiness to break the peace; and accordingly it seems always to have been the better opinion, that a man may be bound to his good behaviour for many causes of scandal, which give him a bad fame, as being contrary to good manners only: as for haunting bawdy-houses with women of bad fame; or for keeping bad women in his own house; or for speaking words of contempt of an inferior magistrate, as a justice of the peace, or mayor, though he be not then in the actual execution of his office; or of an inferior officer of justice, as a constable and such like, being in the actual execution of his office." (1 *Haw. c.* 61, *s.* 2.)

May be required of those who lead ill lives.

Who abuse justices, &c.

"However, it seems the better opinion, that no one ought to be bound to the good behaviour for any rash, quarrelsome, or unmannerly words, unless they either directly tend to a breach of the peace, or to scandalize the government, by abusing those who are intrusted by it with the administration of justice, or to deter an officer from doing his duty; and therefore it seems that he who barely calls another rogue or rascal, or teller of lies, or drunkard, ought not for such cause to be bound to the good behaviour." (1 *Haw. c.* 61, *s.* 3.)

Quarrelsome and dangerous persons.

"However," says he, "I cannot find any certain precise rules for the direction of the magistrate in this respect; and therefore am inclined to think, that he has a discretionary power to take such surety of all those whom he shall have just cause to suspect to be dangerous, quarrelsome, or scandalous; as of those who sleep in the day and go abroad in the night; and of such as keep suspicious company; and of such as are generally suspected

to be robbers, and the like; and of eves-droppers; and common drunkards; and all other persons, whose misbehaviour may reasonably be intended to bring them within the meaning of the statute, as persons of evil fame, who being described by an expression of so great latitude, seem in a great measure to be left to the judgment of the magistrate. But if he commit one for want of sureties, he must show the cause with convenient certainty." (1 *Haw. c.* 61, *s.* 4.)

1. *For what Misbehaviour it is to be required.*

And thus the sense of the statute hath been extended not only to offences immediately relating to the peace, but to divers misbehaviours not directly tending to a breach of the peace; insomuch as it is become difficult to define how far it shall extend, and where it shall stop.

Against whom in general sureties of the good behaviour may be granted.

Mr. *Dalton*, in order to determine the same with some kind of certainty hath (notwithstanding his opinion as above mentioned) inserted a number of instances, wherein sureties of the good behaviour may be granted; and they are these that follow: (*a*)

1. Against rioters.
2. Barrators.
3. Common quarrellers, and common breakers of the peace.
4. Such as lie in wait to rob, or shall be suspected to lie in wait to rob, or shall assault, or attempt to rob another, or shall put passengers in fear or peril, or shall be generally suspected to be robbers by the highway.
5. Such as are like to commit murder, homicide, or other grievances, to any of the king's subjects in their bodies.
6. Such as shall practise to poison another; one instance of which may be the poisoning of their food. Thus, Mr. *Dalton* granted the good behaviour against one who had bought ratsbane, and mingled it with corn, and then cast it among his neighbour's fowls, whereby most of them died.
7. Such as in the presence and hearing of the justice shall misbehave themselves in some outrageous manner of force or fraud.
8. Such as are greatly defamed for resorting to houses suspected to maintain adultery or incontinency.
9. Maintainers of houses commonly suspected to be houses of common bawdry.
10. Common whoremongers and common whores; for bawdry is an offence temporal as well as spiritual, and is against the peace of the land.
11. Night-walkers and eves-droppers.
12. Suspected persons, who live idly, and yet fare well, or are well-apparelled, having nothing whereon to live; unless upon examination they shall give a good account of such their living.
13. Common gamesters, especially if they have not whereon to live.
14. Such as raise hue and cry without cause.
15. Libellers.
16. Putative father of a bastard child.
17. Such as persuade or procure the putative father to run away, or the mother to be conveyed away, whereby she leaveth her child to the charge of the town.
18. Such as abuse a justice's warrant, or shall abuse him or the constable in executing their offices. Nay, it seemeth, he says, that he who shall use words of contempt, or contrary to good manners, against a justice of the peace, though it be not at such a time as he is executing his office, yet he shall be bound to his good behaviour.
19. Such as charge another before a justice with felony, riot, or forcible entry, and yet will not prosecute or give evidence.
20. In general, whatsoever act or thing is of itself a misbehaviour, is cause sufficient to bind such an offender to the good behaviour. (*Dalt. c.* 124.)

To which others have added other instances; as—

21. Forcible entry. (1 *Haw. c.* 64, *s.* 8.)
22. Mr. *Hawkins* says, "that he hath heard it agreed in the court of

(*a*) And see the respective titles as to these offences throughout this work.

1. *For what Misbehaviour it is to be required.*

King's Bench, that a writing full of obscene ribaldry without any kind of reflection upon any one, is not punishable at all by any prosecution at common law; yet it seems," he says, "that the author may be bound to his good behaviour, as a scandalous person of evil fame." (1 *Haw. c.* 73, *s.* 9.)

23. A man did beat a woman in Westminster Hall, and he was bound to the good behaviour; and so, says Mr. *Crompton*, "he may be bound to the peace and good behaviour, where he striketh a person in the presence of the justices in sessions." (*Cromp.* 124.)

24. A man was bound to the good behaviour by the court of King's Bench, for assaulting and threatening a person, so that he could not attend the court in suit there, without great cost. And so it seemeth that it may be done where one cometh to the sessions about a traverse to be tried there, or to prefer a bill of indictment, if he be assaulted or threatened (*Cromp.* 125.)

Observations by Dr. Burn.

I have omitted to make any remarks in the progress of these authorities, being willing to exhibit them together in one view; I proceed now to take notice of such observations as do occur upon the whole.

Power of one Justice.

First, It appears from hence, that the universal practice of one justice binding to the good behaviour is but of a modern date; although the law for it is the same now that it was near four hundred years ago; and that it was a long time doubted whether one justice alone could require sureties of the good behaviour. But here a distinction ought to be made between the power given by the commission of the peace and the power given by the above-mentioned statute: as to the commission, there seemeth to be no foundation for any doubt, but that thereby one justice alone may require such sureties; for the words are express, "We have assigned you, jointly and severally, and every one of you:" but then that extends only to two instances, namely, to "the threatening of a person concerning his body, or the firing of his house." As to the statute, the doubt seems to have arisen upon this; in that, having appointed who shall be assigned for justices, it then directed that "they shall have power to restrain offenders;" and it is holden, Mr. *Lambard* hath observed, "that if no power be expressly given by any statute to any one justice alone, he cannot otherwise compel the observation thereof, than by the help of his fellow-justices." And Mr. *Hawkins*, speaking hereof in the case of riots, says, "that if one justice alone, proceeding upon this statute, shall arrest *an innocent person* as a rioter, it seemeth that he is liable to an action of trespass, and that the party arrested may justify the rescuing of himself; because no one single justice is by this statute made a judge of the said offence: yet, nevertheless," he says, "by a favourable construction which this statute hath received for the advancement of justice, it hath been resolved, that any one justice upon this statute, 'if he find the persons riotously assembled,' may, without staying for his companions, arrest the offenders, and bind them to their good behaviour."

Extension of cases in which surety may be required.

Secondly, It seemeth, from what hath been rehearsed, that the words, "not of good fame," were generally understood for a long time to refer to such offences only as have a relation to the peace, and not to other things which concern not the peace.

Thirdly, That one great inlet to the larger, and at length almost unlimited interpretation of the words, was the case above mentioned, 13 Hen. VII., wherein it was adjudged to be lawful to arrest a man for the good behaviour, for frequenting a suspected bawdy-house, with women of bad fame, And this is the reason which Mr. *Dalton* gives for many of his instances above specified,—namely, that they are more properly against the peace than this same case of avoutry. (*Dalt. c.* 124, *p.* 289.)

Fourthly, That when once the gap was opened for the admission of other offences not immediately relating to the peace, they flowed in and multiplied. Thus in the case of bastardy, having some affinity with the other, of frequenting bawdy-houses, Mr. *Lambard* thought that with equal reason, the reputed father of a bastard child might be bound to

the good behaviour; and, in a few years after, Mr. *Dalton* delivers it absolutely, that he may be so bound.

1. *For what Misbehaviour it is to be required.*

Fifthly, That therefore, the natural and received sense of any statute ought not to be departed from without extreme necessity; for that one concession will make way for another, and the latter will plead for the same right of admission as the former.

Sixthly, That, notwithstanding the aforesaid instances given by Mr. *Dalton* and others, it may not be safe in all cases to rely upon every one of them without distinction; not only because it is almost impossible for any two cases to be exactly alike in all other circumstances, but also because in fact divers of them, at different times, have been adjudged otherwise; and others have not prevailed without much difficulty and contradiction in the courts above, and perhaps, were at length admitted rather from the conveniency and reasonableness of the thing itself, and from an indulgence usually allowed to those gentlemen who serve their country without gain, and oftentimes with much trouble, than from any clear, positive, and express power given to them by the commission, or by the said statute.

Seventhly, That, notwithstanding all which hath been said, perhaps the case before recited, concerning the frequenting of a suspected bawdy-house, will not support the weight which so many authors have laid upon it. For the question, whether a justice of the peace had cognizance of the offence by virtue of the commission of the peace, or of the statute of the 34 Edw. III., was no part of the dispute; for it was an arrest by the constable *ex officio*, as a conservator of the peace at common law, and without any warrant from a magistrate; and the question was not whether the constable might require sureties for the good behaviour, as a thing different from sureties for the peace, but whether in that case he could arrest at all or not.

And if the authority of this case shall be abated, several of the above-mentioned instances will abate in proportion.

Eighthly, It is to be observed, that others of the above said instances were established upon matters originally determined in the court of King's Bench, and Mr. *Crompton* himself refers to the authority and practice of that court in several instances. (*Cromp.* 120.) But it doth by no means follow, from what the justices of the court of King's Bench may do, that the justices of the peace may do the like; for their authority is circumscribed and limited by their commission and the statute law.

Binding to good behaviour after a common law conviction.

Ninthly, That it will perhaps abate some other of the foregoing instances, if we attend to this consideration: that there is a great difference between what the justices in sessions may do, after a conviction by a jury, for an offence committed, and what a single justice out of the sessions may do, before an offence is committed, and to prevent the same from being committed; or what a single justice may do, upon a summary conviction before him, for an offence, as directed by some special act of parliament. The truth is, binding to the good behaviour was a discretionary judgment at the common law, given by a court of record for an offence at the suit of the king, after a common law conviction by verdict of twelve men. Trial by his peers is the Englishman's birthright by the great charter, and cannot be taken away but by an authority equal to that which established it,—that is, by act of parliament: and, therefore, where an act gives a summary conviction before a justice of the peace, and inflicts a punishment upon such conviction, such statute must be pursued both as to the conviction and punishment. And it seemeth incongruous, that a justice of the peace shall have power to bind a man to the good behaviour, for an offence which he himself hath no power to hear and determine; for that is, in effect, giving judgment, and awarding execution, when it doth not and cannot legally appear to him that the person is guilty.

Great caution recommended.

Tenthly, That, therefore, upon the whole, it may be proper to conclude, that the magistrate, in this article of the good behaviour, cannot exercise too much caution and good advisement; that in matters which the law hath left indefinite, it is better to fall short of than to exceed his commis-

1. *For what Misbehaviour it is to be required.*

sion and authority; that to bind a man to the good behaviour upon the statute for *evil fame* in general may not always be with safety: not only because upon an action brought it may be hard to prove such evil fame, but also because in fact it is not always true, for many a good man hath been evil spoken of; that although, in some cases, a justice of the peace may have a *discretionary* power (as Mr. *Hawkins* expresseth it), yet he must remember withal that it is a *legal* discretion, as Mr. *Barlow* terms it, in which, in favour of liberty, great tenderness is to be used; or, as Lord *Coke* hath defined it, discretion is a knowledge or understanding to discern between truth and falsehood, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to our wills and private affections; and such discretion ought to be limited and bounded with the rules of reason, law, and justice. (5 *Rep.* 100; *Keighley's case*, 10 *Rep.* 140.)

Discretion defined.

II. For what it shall be forfeited.

This hath been handled in part as it fell in with the former section; and agreeably to the doctrine there laid down, Mr. *Dalton* says, that he who is bound to the good behaviour ought to demean himself well in his carriage, and in his company, not doing anything which shall be a cause of breach of the peace, or to put the people in fear, dread, or trouble; and so shall be intended of all things which concern the peace, but not in misdoing of other things which touch not the peace. (*Dalt. c.* 122.)

And Mr. *Hawkins* saith, it hath been laid down as a general rule, that whatever will be a good cause to bind a man to his good behaviour will forfeit a recognizance for it; but that this hath since been denied, and indeed seems by no means to be maintainable, because the statute, in ordering persons of evil fame to be bound in this manner, seems, in many places, chiefly to regard the prevention of that mischief which they may justly be suspected to be likely to do; and in that respect requires them to secure the public from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them or not; and it would be extremely hard in such cases to make persons forfeit their recognizances, who yet may justly be compellable to give one, as those who keep suspicious company, or those who spend much money idly, without having any visible means of getting it honestly, or those who lie under a general suspicion of being rogues, and the like. (1 *Haw. c.* 61, *s.* 5.)

However, it seems that such a recognizance shall not only be forfeited for such actual breaches of the peace for which a recognizance for the peace may be forfeited, but also for some others, for which such a recognizance cannot be forfeited: as, for going armed with great numbers to the terror of the people, or speaking words tending to sedition; and also for all such actual misbehaviours which are intended to be prevented by such a recognizance, but not for barely giving cause of suspicion of what, perhaps, may never actually happen. (1 *Haw. c.* 61, *s.* 6.)

III. Forms, *List of.*

INFORMATION before a Justice out of Sessions, to require Surety of the Peace or Good Behaviour, (No. 1.)
WARRANT thereon, (No. 2.)
WARRANT for Good Behaviour on 34 Edw. III. c. 1, (No. 3.)
COMMITMENT for want of Sureties, for a limited period, (No. 4.)
COMMITMENT for want of Sureties, to appear at the Sessions, (No. 5.)

Recognizance for the Peace or Good Behaviour, (No. 6.)
Liberate to discharge one committed for want of Sureties to keep the Peace, (No. 7.)
Supersedeas, (No. 8.)
Liberate to discharge one committed for want of Personal Appearance at the Sessions, (No. 9.)
Articles of the Peace exhibited at Sessions, (No. 10.)
Articles of the Peace exhibited in the King's Bench, (No. 11.)

(1.) Information before a justice out of sessions, to require surety of the peace or good behaviour.

——— } *Be it remembered, that on, &c., A. B., of , in the said county of to wit.* } , [gentleman,] *came personally before me, J. P., one of his majesty's justices of the peace in and for the said county, at, &c., and on his oath informeth me, that C. D., of, &c.* [*labourer*], *did, on, &c., at, &c., most violently and maliciously declare and threaten, &c., and did also on, &c.* [here state the defendant's threats and acts; see Form, No. 11]; *and that from the above premises, he, this complainant, is afraid that the said C. D. will do him some grievous bodily injury; * and therefore prays that the said C. D. may be required to find sufficient sureties to keep the peace* [or, "*to be of good behaviour,*" as may be required; see Form, *post* (No. 6)] *towards him, this complainant. And this complainant also says, that he doth not make this complaint against, nor require such sureties from, the said C. D. from any hatred, malice, or ill-will, but merely for the preservation of his life and person from injury.*

A. B.

Sworn before me, J. P.

(2.) Warrant thereon.

To E. F., Constable of , in the said county, and all others whom this may concern.

Whereas A. B., of , in the said county [*gentleman*], *hath this day made information on oath before me, J. P., one of his majesty's justices of the peace in and for the said county, at, &c., that C. D., of, &c.* [*labourer*], *did, on, &c., at, &c.* [here set forth the complaint, as in the above Form to the *, in the past tense, describing the complainant by his name]; *and therefore the said A. B. hath prayed that the said C. D. may be required to find sufficient sureties to keep the peace* [or, "*be of good behaviour,*" as the case may be] *towards him, the said A. B.; I do, therefore, hereby require and command you to apprehend and bring the said C. D. before me, or some other of her majesty's justices of the peace for the said county, on, &c., at, &c., to answer the said complaint, and to find sufficient sureties to keep the peace* [or, "*be of good behaviour*"] *towards her majesty and all her liege people, and especially towards the said A. B., for such term as shall be then enjoined him, and to be further dealt with according to law. Given under my hand and seal, the day of , &c.*

J. P. (L. S.)

(3.) Warrant for the good behaviour, on the 34 Edw. III. c. 1. (a).

County of } *J. T., esq., and T. L. esq., justices of our lady the Queen, assigned to keep the peace within the said county, to the sheriff of the said county, to the constable of the hundred of , in the said county, to the petty constables of the town of , in the said county, and to all and singular the bailiffs, constables, and other officers, of our said lady the Queen, as well within liberties as without, in the same county, greeting:*

Forasmuch as we are given to understand, by the information, testimony, and complaint of many credible persons, that A. O., of , in the county aforesaid [*gentleman*], *and B. O., of the same* [*yeoman*], *are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the peace of our said lady the Queen, so that murder, homicide, strifes, discords, and other griecances and damages, amongst the lieges of our said lady the Queen, concerning their bodies, are likely to arise thereby; therefore, on the behalf of our said lady the Queen, we command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the aforesaid A. O. and B. O., so that you have them before us, or others our fellows, justices of our said lady the Queen, assigned to keep the peace within the county aforesaid, as soon as they can be taken* [or, "*before the justices*

(a) From *Lambard* and *Dalton*.

3. Forms.

of our said lady the Queen, assigned to keep the peace within the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors, in the said county committed, at the next general quarter sessions of the peace to be holden in and for the said county"], to find then, before us [or, "*the said justices'*], *sufficient surety and mainprize for their good behaviour towards our said lady the Queen, and all her people, according to the form of the statute in such case made and provided. And this you shall in nowise omit, on the peril that shall ensue thereon. And have you before us* [or, "*before the said justices, at the sessions aforesaid"*] *this precept. Given under our seals, at, &c. the day of , &c.*

(4.) Committment for want of sureties by the justice.

——— } *To E. F., the Constable of , in the said county, and also to the keeper of her majesty's gaol* [or, *House of Correction, at*] *for the said county, and others whom this may concern.*

Whereas, A. B., of, &c. [here recite the complaint, as in the warrant, *ante*, No. 2]; *and whereas the said C. D. was this day brought and appeared before me, J. P., one of her majesty's justices of the peace in and for the said county, at, &c., to answer the said complaint; and I, the said justice, have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of* [100*l.*], *with two sufficient sureties in the sum of* [50*l.*] *each, to keep the peace* [or, "*be of good behaviour,*" as the case may be] *towards her majesty and all her liege people, and particularly towards the said A. B., for the term of* [*twelve calendar months*] *now next ensuing. And, insomuch as the said C. D. hath refused and still refuses to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol* [or, *House of Correction at*] *of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you, the said keeper, to receive the said C. D. into your custody in the said gaol, and him there safely to keep for the space of* [*twelve calendar months*], *unless he, in the meantime, enter into such recognizance with such sureties, as aforesaid, to keep the peace in the manner and for the term above mentioned. Herein fail not. Given under my hand and seal, the day of , &c*

J. P. (L. S.)

(5.) Commitment for want of sureties to appear at the sessions.

——— } *To E. F., the Constable of , in the said county, and also to the keeper of her majesty's gaol* [or, *House of Correction, at* ,] *for the said county, and all others whom this may concern.*

Whereas [here recite the complaint, as in the Form of warrant, *ante*, No. 2]; *and whereas the said C. D., having been this day brought and appeared before me the said justice* [or, *J. P., one of her majesty's justices of the peace in and for the said county*], *to answer the said complaint, and having been required by me to find sufficient sureties, as well for his appearance, at the next general quarter sessions of the peace to be held for the said county, to do what shall be then and there enjoined him by the court, as also in the meantime to keep the peace* [or, "*be of good behaviour,*" as the case may be] *towards her majesty and all her liege people, and especially towards the said A. B., hath refused and neglected, and still refuses and neglects, to find such sureties: I do therefore hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol* [or, *House of Correction, at* ,] *of the said county, and to deliver him to the keeper thereof, together with this warrant. And I do also require and command you, the said keeper, to receive the said C. D. into your custody, and him there safely to keep until the next general quarter sessions of the peace to be held for the said county, unless he in the meantime find sufficient sureties as well for his appearance at the said sessions as in the meantime to keep the peace, as aforesaid. Given under my hand and seal, the day of , &c.*

J. P. (L. S.)

(6.) Recognizance for the peace or good behaviour.

——— } *Be it remembered, that on, &c., A. O., of , in the county aforesaid* [*yeoman*], *A. S., of the same place* [*yeoman*], *and B. S., of the same place* [*yeoman*], *came before me, H. C.* [*doctor of laws*], *one of the justices of our said lady the Queen, assigned to keep the peace in and for the said*

county, and acknowledged themselves to owe to our said lady the Queen, to wit, the said A. O., the sum of [20*l.*], *and the said A. S. the sum of* [10*l.*], *and the said B. S. the sum of* [10*l.*] *of good and lawful money of Great Britain to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if he, the said A. O., shall fail in performing the condition underwritten.*

Acknowledged before me, H. C.

3. Form.

If the party be bound merely to keep the peace, or be of good behaviour, for a specified time, the condition will be thus: *The condition of this recognizance is such, that if the above bounden A. O. shall keep the peace* [or, "*be of good behaviour,*" as the case may be] *towards the Queen, and all her liege people, and especially towards A. I., of , in the said county* [*gentleman*], *for the term of* [*twelve calendar months*] *now next ensuing, then the said recognizance shall be void, or else remain in its force.*

If the party be bound to appear at the sessions, the condition of the recognizance will be thus: *The condition of this recognizance is such, that if the said C. D. shall personally appear at the next general quarter sessions of the peace to be holden for the said county, to do and receive what shall be then and there enjoined him by the court, and, in the meantime, shall keep the peace* [or, "*be of good behaviour*"] *towards her majesty and all her liege people, and especially towards the said A. B. Then, &c.*

(7.) Liberate to discharge one committed for want of sureties to keep the peace.

——— } *To E. F., the keeper of her majesty's gaol* [or, *House of Correction, at ,*] *for the said county, and others whom this may concern.*

You are hereby commanded to discharge out of your custody the body of A. O., of , in the said county [*labourer*] *he having this day entered into a recognizance before me, J. P., one of her majesty's justices of the peace in and for the said county in the sum of* [100*l.*], *with two sureties in* [50*l.*] *each, to keep the peace,* [or, "*be of good behaviour,*" as the case may be] *towards her majesty, and all her liege people, and especially towards A. B., of, &c.* [*gentleman*], *for the space of twelve calendar months*] *now next ensuing. Given under my hand and seal, the day of , &c.*

(8.) Supersedeas.

——— } *J. R., esq., one of the justices of our lady the Queen, assigned to keep the peace in and for the county aforesaid, to the sheriff, bailiffs, constables, and others, the faithful ministers and subjects of our said lady the Queen within the said county, and to every of them greeting:*

Forasmuch as A. O., of , in the said county [*yeoman*], *hath personally come before me, at , in the said county, and hath found sufficient surety, that is to say, A. S., of , [yeoman], and B. S., of , [yeoman]; either of the which hath undertaken for the said A. O., under the pain of* [20*l.*], *and he, the said A. O., hath undertaken for himself, under the pain of* [40*l.*], *that he, the said A. O., shall personally appear at the next general quarter sessions of the peace to be holden in and for the said county, then and there to do and receive what shall be enjoined him by the said court; and, in the meantime, shall well and truly keep the peace* [or, "*be of the good behaviour,*" as the case may be] *towards our said lady the Queen, and all her liege people, and especially towards A. I., of , [yeoman]; therefore, on the behalf of our said lady the Queen, I do command you, and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the said A. O.: and if you have, for the said occasion, and for none other, taken and imprisoned him, the said A. O., that then him you deliver, or cause to be delivered, and set at liberty, without further delay. Given at , aforesaid, in the county aforesaid, under my seal, this day of , &c.*

(9.) Liberate to discharge one committed for want of sureties for personal appearance at sessions.

——— } *J. D., esq., one of the justices of our lady the Queen, assigned to keep the peace in and for the county aforesaid, to the keeper of her majesty's gaol, at , in the said county, greeting:*

Forasmuch as A. O., in the prison of our said lady the Queen, in your custody now being, at the suit of A. I., of , in the said county [*yeoman*], *for the*

3. *Forms.*

want of his finding sufficient sureties for his personal appearance at the next general quarter sessions of the peace, to be holden in and for the said county, and for his keeping the peace [or, "*being of the good behaviour,*" as the case may be], *in the meantime, towards our said lady the Queen, and all her liege people, and especially towards the said A. I., hath found before me sufficient sureties, to wit, A. S., of , [yeoman], and B. S., of , [yeoman], either of which hath undertaken for the said A. O., under the pain of* [20*l.*], *and he, the said A. O., hath undertaken for himself, under the pain of* [40*l.*], *that he, the said A. O., shall and will personally appear at the next general quarter sessions of the peace to be holden in and for the said county, and shall well and truly keep the peace* [or, "*be of the good behaviour,*" as the case may be], *in the meantime, towards our said lady the Queen, and all her liege people, and especially towards the said A. I.: therefore, on the behalf of our said lady the Queen, I do command you, that if the said A. O. do remain in the said gaol, for the said cause, and for none other, then you forbear to grieve or detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will fall thereon. Given under my seal, at , in the said county, the day of, &c.*

(10.) Articles of the peace exhibited at sessions.

At the quarter [or, "*general quarter*"] *sessions of the peace of our lady the Queen, holden at* [*the New Sessions House, on Clerkenwell Green*], *in and for the county of* [*Middlesex*], [*by adjournment*], *on* [*Monday*], *the day of in the year of the reign of our sovereign lady Queen Victoria, before W. M., J. P., W. D., E. F., esqs., and others their fellows, justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen in and for the said county of* [*Middlesex*], *and also to hear and determine divers felonies, trespasses, and other misdeeds, committed in the same county.*

[*Middlesex.*] *Articles of the Peace exhibited by W. P., of , in the parish of , in the said county of* [*Middlesex*], [*cabinet-maker*], *on behalf of himself* [*and Hannah, his wife (she, the said Hannah, being now confined through sickness in this exhibitant's dwelling-house, situate as aforesaid)*], *against J. M., late of , in the said county* [*shoemaker*], *in order to preserve the lives and persons of himself, this exhibitant, and the said Hannah, his wife, from bodily harm.*

[Here state the subject-matter of the complaint and causes of fear, which may be as in form *infra, mutatis mutandis.*]

This exhibitant, on his oath, saith that the said H. P., this exhibitant's said wife, is now so sick and weak, that she cannot be removed from her home to attend this honourable court, to join in the exhibition of this complaint, and that he, this exhibitant, by means of the premises aforesaid, conceives himself and his said wife to be in great bodily danger. And he further saith, that he doth not make this complaint against the said J. M., through any hatred, malice, or ill-will, which he hath or beareth towards the said J. M., but merely for the preservation as well of the life of his said wife as of his own, and also of their persons from bodily harm.

Sworn at the [*New Sessions House, on Clerkenwell Green*], *this day of , 18 .* *W. P.*

By the Court.

(11.) Articles of the peace exhibited by a wife against her husband, in the Queen's Bench.

Of Term, in the year of the reign of Queen Victoria.

[*England.*] *Articles of the Peace exhibited by C. B., wife of A. B., of , [gentleman], against the said A. B., her husband, through fear of death, or of receiving some great bodily harm.*

[Here state the causes producing the fear; and the mode of stating them may be collected from the following matters:]

First. *This exhibitant, on her oath, saith, that she hath been married to the said A. B. for the space of* [*six years and upwards*]; *and that, for the space of*

[one year and ten months] before the [1st day of November] last past, the said A. B. hath treated this exhibitant with great cruelty and barbarity, and without any provocation whatever from this exhibitant; and, in particular, hath frequently, during the time last aforesaid, struck and threatened to strike this exhibitant, and dragged her about his [dwelling-house].

3. *Forms.*

Secondly. *This exhibitant, on her oath, saith, that the said A. B., having made a voyage to the [East Indies], returned on or about the [29th day of September, A. D. 1826]; and, soon after his return, commenced or renewed an acquaintance with a woman who was known by the name of E., with whom, as well as with other women, the said A. B. frequently cohabited, as this exhibitant hath great reason to believe; this exhibitant having known the said woman called by the name of E. shut into the said A. B.'s [bed-room], where she hath remained with him several hours. And this exhibitant saith, that the said A. B. compelled this exhibitant to reside in mean lodgings, different from his place of residence; and that, whenever this exhibitant ventured to go to the said A. B.'s [chambers] to expostulate with him on his ill-treatment, he hath beaten or threatened to beat this exhibitant; and this exhibitant saith that, at one time in particular, during the time last aforesaid, the said A. B. did, with a violent blow, knock this exhibitant down in the said [chambers], and that this exhibitant, in consequence of the said blow, lay senseless for a considerable time.*

Thirdly. *This exhibitant, on her oath, saith, that, by means of the cruel treatment of the said A. B., before set forth, and particularly of his having at divers times within the space of [three months] last past, as this exhibitant hath been informed and believes, threatened to seize, confine, beat, maim, or ill-treat this exhibitant, she, this exhibitant, is put into the utmost fear and danger, and verily believes that the said A. B. will put his said threats into execution, and will do this exhibitant some bodily hurt; and therefore this exhibitant is prevented from going out about her lawful occasions, until she can obtain that protection from the laws of this country which this honourable court has authority to grant. And this exhibitant further saith, that she is now under great fear and apprehension that the said A. B. will take the first opportunity of doing this exhibitant some bodily hurt, unless he is restrained therefrom by this honourable court; and therefore this exhibitant most humbly craves that the said A. B. may be ordered by this honourable court to find sufficient sureties for keeping the Queen's peace towards this exhibitant.*

Lastly. *This exhibitant saith, that she doth not make this complaint against the said A. B. through any hatred, malice, or ill-will, which she hath or beareth towards him, but merely for the preservation of her life, and also of her person from bodily harm.*

The above-named C. B. was sworn to the truth of the above premises on the day of , A. D. 1845. — *C. B.*

By the Court.

Surgeons. *See "Physicians, Surgeons, and Apothecaries," ante.*

Surplusage, *what is, see "Indictment,"* Vol. III. p. 868; *"Conviction,"* Vol. I.

Surveys.

As to the proof of public or private surveys, *see "Evidence,"* Vol. II. p. 389.

By stat. 4 & 5 Vict. c. 30. entitled "An Act to authorize and facilitate

4 & 5 Vict. c. 30.

Justices at quarter sessions to appoint persons to assist in ascertaining the boundaries of counties, cities, boroughs, &c.

the Completion of a Survey of Great Britain, Berwick upon Tweed, and the Isle of Man," [21st June, 1841,] reciting that "several counties in that part of the United Kingdom called England have been surveyed by officers appointed by the master general and board of ordnance, and it is expedient that general surveys and maps of England, Scotland, Berwick upon Tweed, and of the Isle of Man, should be made and completed by officers in like manner appointed; and that the boundaries of the several counties in England and Scotland, and of Berwick upon Tweed and of the Isle of Man, should be ascertained and marked out:" it is enacted "That from and after the passing of this act, for the purpose of enabling the master general and board of ordnance to make and complete such surveys and maps of England, Scotland, Berwick upon Tweed, and the Isle of Man, in manner aforesaid, it shall and may be lawful for the justices assembled at any quarter sessions, or adjournment thereof, held in and for any county, riding, or division in England, Scotland, Berwick upon Tweed, and the Isle of Man, upon the application in writing of any officer appointed by the master general and board of ordnance for the purposes of this act, such application to be transmitted to the clerk of the peace fourteen days at the least before the holding of the court at which such application shall be considered, who shall cause notice of such application to be inserted in the newspapers in which county advertisements are commonly inserted seven days at the least before the holding of such court, to nominate and appoint one or more fit and proper person or persons to aid and assist, when required, any officer appointed as aforesaid in examining, ascertaining, and marking out the reputed boundaries of each county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, in England, Scotland, Berwick upon Tweed, and the Isle of Man; and such person shall from time to time act under and obey such directions as he shall receive from the officer or other person appointed by the master general and board of ordnance to make such surveys and maps as aforesaid: Provided always, that if any person shall produce any false, forged, untrue, or fabricated appointment, every such person shall forfeit and pay the sum of 50*l.*"

Persons producing fabricated appointments to forfeit 50*l.*

Surveyor, &c. empowered to enter lands to fix boundaries.

Sect. 2. "That for the execution of the purposes of this act it shall and may be lawful for any person appointed by the justices as aforesaid, and for any other person acting in aid and under the orders of such person, and for any officer or person appointed by or acting under the orders of the master general and board of ordnance, and they are hereby respectively authorized and empowered, from time to time, after notice in writing of the intention of entering shall have been given to the owner or occupier, as the case may be, to enter into and upon any estate or property of any county, or of any body politic or corporate, ecclesiastical or civil, or into and upon any land, ground, or heritages of any person or persons whomsoever, for the purpose of making and carrying on any survey authorized by this act, or by the order of the master general and board of ordnance, and for the purpose of fixing any mark or object to be used in the survey, or any post, stone, or boundary mark whatsoever, and to fix and place any such object, post, stone, or boundary mark in any such estate or property, land or ground, or heritages, and to dig up any ground, for the purpose of fixing any such object, post, stone, or boundary mark, for such object or purpose, and also to enter upon any estates or property, lands, grounds, or heritages, through which any such person appointed by the justices as aforesaid, and any officer or other person appointed by and acting under the orders of the master general and board of ordnance, shall deem it necessary and proper to carry any boundary line for the purposes of this act at any reasonable time in the day, until the surveying, ascertaining, and marking out of any reputed boundary line shall be completed according to the directions of this act: Provided always, that in every case in which it shall be necessary to any person appointed by the justices as aforesaid, for any officer or other person appointed by and acting under the orders of the master general and board of ordnance, or his or their assistant or as-

Where it is necessary to fix any mark in any garden, &c. the occupier may em-

sistants, to fix any such object, post, stone, or boundary mark within any walled garden, orchard, or pleasure ground, such person appointed by the justices aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, or his or their assistant or assistants, shall give three days notice to the occupier of such garden, orchard, or pleasure ground, of his intention so to do, and it shall be lawful for such occupier to employ any person whom he may think fit to fix such object, post, stone, or boundary mark within such garden, orchard, or pleasure ground, at such time, in such place or places, and in such manner as such person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, or his or their assistant or assistants, shall direct: Provided also, that such person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, or his or their assistant or assistants, and workmen, shall do as little damage as may be in the execution of the several powers to them granted by this act, and shall make satisfaction to the owners or occupiers (as the case may require) of such lands, grounds, and heritages, or owners of trees, (as the case may require,) which shall be any way hurt, damaged, or injured, for all damages to be by them sustained in or by the execution of all or any powers of this act, in case the same shall be demanded: Provided always, that in case of dispute between the said person appointed by the justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, on the one hand, and the owner or occupier (as the case may be), on the other hand, as to the amount of damage sustained, the same shall be ascertained and determined by any two or more justices in petty sessions assembled of the county in which the lands, grounds, heritages, or trees may be situate: Provided always, that any owner or occupier as aforesaid, who shall think himself aggrieved by the decision of the justices, may appeal against such decision to the justices of the said county in quarter sessions assembled, who shall hear and determine such appeal, and shall increase or diminish the amount of damages awarded by the justices in petty sessions, and shall award costs for or against the appellant, as the justice of the case shall seem to them to require: Provided always, that such appeal shall be prosecuted at such quarter sessions as shall be holden not less than twenty-one days nor more than four calendar months after the decision of the justices in petty sessions: Provided further, that any person so appealing shall give notice to the clerk of the said justices in petty sessions, within seven days of their decision, of his intention to appeal against their decision, and shall enter into sufficient recognizance to prosecute such appeal."

ploya person to fix it.

Satisfaction to be made for damages.

Appeal to quarter sessions.

Sect. 3 enacts that sheriffs in Scotland are to settle the amount of compensation.

Sect. 4. "That the clerk of the peace of each and every county shall, within twenty-one days after he shall be thereunto required in writing by any person appointed by the justices as aforesaid, or by any officer or other person appointed by and acting under the master general and board of ordnance, prepare and deliver to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, a list containing the names and descriptions of the several hundreds, cities, boroughs, burghs, towns, parishes, or other places within such county; and each such clerk of the peace shall be paid by the said board adequate remuneration for his trouble, and for any expenses incurred by him in pursuance of such requisition; and if any clerk of the peace shall refuse or neglect or omit to make or deliver such list, in compliance with the request of such surveyor, every such clerk of the peace so offending shall forfeit a sum not exceeding 10*l.* and not less than 2*l.*, in the discretion of the justice or other judge, officer, or court before whom such offender shall be convicted."

Clerk of the peace of each county shall deliver to surveyor a list of all the cities, towns, boroughs, parishes, &c. within the county, on penalty of 10*l.*

4 & 5 Vict. c. 30.

Clerk of the peace shall attend surveyor on twenty days notice of defining the boundaries of counties, &c.

Sect. 5. "That for the purpose of surveying, ascertaining, and marking out the reputed boundaries of any such county, it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance within such county, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, is hereby authorized and empowered, by notice in writing signed with his name, and directed and delivered to any such clerk of the peace, to require the attendance of any and every such clerk of the peace in or for any and every such county, or in or for any adjoining county, either in the same or any adjoining county, at such time (not being less than twenty-one days after the date of such notice) and at such place as shall be specified in such notice, and to produce to such person appointed by such justices as aforesaid, or such officer or other person appointed by and acting under the master general and board of ordnance, any books maps, papers, or other documents, in his custody or possession as such clerk of the peace, which such person may require for the purpose of carrying this act into execution, at which time and place every such clerk of the peace shall and he is hereby required to attend upon such person accordingly, and to aid and assist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of this act; and in case it shall happen that there shall not be any clerk of the peace for any such county or adjoining county, or being such any such officer shall omit or neglect to attend at the time and place mentioned in any such notice, then and in such case it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, by like notice, to require any two or more inhabitants of any such county to attend in the place and stead of such clerk of the peace; and every such inhabitant to whom any such notice shall be directed and delivered shall and he and they is and are hereby required to attend upon such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, accordingly, and to assist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of the purposes of this act; Provided always, that no clerk of the peace shall be obliged to attend as herein directed at such time or at such place or in such manner as shall interfere with the proper discharge of his ordinary duties as clerk of the peace, nor shall he be called upon to produce any books, maps, papers, or other documents the production of which can in any way injuriously affect the interests of each such county.

On failure of clerk of the peace attending, two inhabitants may be required to attend.

Boundaries of the counties to be ascertained, &c., and marked out by posts, stones, &c.

Sect. 6. "That it shall be lawful for any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, at the time mentioned in any such notice, accompanied by the clerk of the peace for the county the reputed boundaries of which are to be defined and marked out, and by the clerk of the peace of any county adjoining thereto, or by such inhabitants as aforesaid, and such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, clerk of the peace, and other persons, is and are hereby authorized and required to perambulate the boundaries of such county, for the purpose of surveying, ascertaining, and marking the same, according to the best of their power and information; and for that purpose it shall be lawful for such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master

general and board of ordnance, clerk of the peace, and other persons, to call on any inhabitant of any such counties to assist them in so doing; and when it shall appear to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, that the reputed boundaries of any such county are sufficiently ascertained, such boundaries shall be marked out by such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in such manner as may be necessary, by the putting down of any posts, blocks, or bolts of wood, metal, or stone, or by the affixing of any marks on or against any church, chapel, bridge, house, or other public or private building or post, and with such distinguishing letters or figures as such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, shall think fit and proper for the occasion." 4 & 5 Vict. c. 36.

Sect. 7. "That if any person not duly authorized shall take away, remove, or displace, or alter the situation of any boundary stone, post, block, bolt, or mark which shall be set up and placed for the purposes of this act, or shall wilfully deface, mutilate, break, or destroy any such boundary stone, post, block, bolt, or mark, every person so offending shall forfeit and pay a sum not exceeding 10*l.* and not less than 2*l.* in the discretion of the justice, or other judge, officer, or court before whom such offender shall be convicted." Penalty on removing or defacing boundary stones, &c.

Sect. 8. "That if any person shall wilfully obstruct or hinder any person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of his duty in or about the ascertaining and marking out of the boundaries of any county under the provisions of this act, or shall in any way resist such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the performance of his duty under this act, or shall obstruct, hinder, assault, or resist any clerk of the peace, or any workman or other person acting in aid of any such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of this act, every person so offending shall forfeit and pay a sum not exceeding 10*l.* and not less than 2*l.*, in the discretion of the justice or other judge or officer before whom such offender shall be convicted." Penalty on obstructing survey, &c.

Sect. 9. "That every person who shall, in pursuance of notice from any person appointed by such justices as aforesaid or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, attend and accompany any other person appointed by such justices as aforesaid, or any officer or such person appointed by and acting under the orders of the master general and board of ordnance, in the ascertaining, surveying, and marking out the boundary of any county under the provisions of this act, shall receive, and shall be entitled to receive, for his trouble and loss of time, such sum of money or allowance as the master general and board of ordnance shall think fit, for every day during which such person shall be employed by or engaged with such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of this act, upon a certificate to be signed by such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance." Allowance to parties, &c. attending to point out boundaries.

Sect. 10. "That the amount of damage sustained by the occupiers of grounds, lands, heritages, or owners of trees, as aforesaid, and the allowance to be made to the said person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders Payments for damage, how to be made.

4 & 5 Vict. c. 30.

of the master general and board of ordnance, and to such other persons as aforesaid, shall be paid by the board of ordnance out of the aids granted to such board by parliament."

Penalties on parties, &c. not attending, or not pointing out boundaries.

Sect. 11. "That if any clerk of the peace, or other person, who shall be summoned or required in manner hereinbefore directed, by any person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, in the execution of this act, shall refuse or neglect or omit to attend such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, or shall refuse or neglect or omit to inform and point out, to the best of his knowledge, to such person appointed by such justices as aforesaid, or any officer or other person appointed by and acting under the orders of the master general and board of ordnance, the boundaries of any county, or shall wilfully make any false statement or mis-statement with respect to any such boundaries, or shall wilfully refuse or neglect or omit to give any information in the power of such clerk of the peace or other person to give or afford with respect to any such boundaries, every such clerk of the peace or other person so offending shall forfeit and pay a sum not exceeding 10*l.* and not less than 2*l.*, in the discretion of the justices, or other judge, officer, or court before whom such offender shall be convicted."

Act not to affect any boundaries or rights of property.

Sect. 12. "That this present act, or any clause, matter, or thing herein contained, shall not extend, or be deemed or be construed to extend, to ascertain, define, alter, enlarge, increase or decrease, nor in any way to affect, any boundary or boundaries of any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same shall be respectively known or called, nor the boundary or boundaries of any land or property, with relation to any owner or owners, or claimant or claimants of any such land respectively, nor to affect the title of any such owner or owners, or claimant or claimants respectively, in or to or with respect to any such lands or property, but that all right and title of any owner or claimant of any land or property whatever within any hundred, parish, or other division or place whatever, shall remain to all intents and purposes in like state and condition as if this act had not been passed; any description of any such land, with reference to any such hundred, parish, or other division or place whatever, or otherwise, or any thing in this act contained, or any law, custom, or usage, to the contrary in anywise notwithstanding."

Recovery of penalties before two justices of the peace, sheriff, deemsters, &c.

Sect. 13. "That all penalties and forfeitures inflicted or imposed by this act shall and may be recovered in a summary way by the order and adjudication of any two justices of the peace for the county or place, or of the sheriff or court of deemsters, in which such penalty shall be incurred, on complaint to them for that purpose exhibited, and shall afterwards be levied, as well as the costs of such proceedings, in case of nonpayment, by distress, poinding, or other legal process, and sale of the goods and chattels of the offender or offenders, or person or persons liable to pay the same, by warrant under the hand and seal of such justices and of such sheriff, or hand and seal of the court of deemsters, or other legal process; and such justices, sheriff, and court respectively are hereby authorized and required to summon before them any witness or witnessess, and to examine such witness or witnesses upon oath (or affirmation), of and concerning all offences, penalties and forfeitures under this act, and to hear and determine the same; and the overplus (if any) of the money so levied or recovered, after discharging the fine, penalty, or forfeiture for which such warrant or other legal process shall be issued, and the costs and expences of recovering and levying the same, shall be returned, upon

demand, to the owner or owners of the goods or chattels so seized or distrained; and in case such penalties or forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices, sheriff, or court respectively to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress or poinding, or other legal process, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices, sheriff, or deemsters, for his or their appearance before such justices, sheriff, or other proper officers, on such day or days as shall be appointed for the return of such warrant of distress or poinding, or other legal process, such day or days not being more than seven days from the time of taking any such security, and which security the said justices, sheriff, or deemsters respectively are hereby empowered to take by way of recognizance, caution, or otherwise; but if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for such justice, or any two justices of the peace for such county or place as aforesaid, or for such sheriff or deemsters, and they are hereby authorized and required, by warrant under their hand and seal, or under the hand of such sheriff, or other legal process, to cause such offender or offenders to be committed to the gaol of such county or place, there to remain, without bail or mainprize, for any term not exceeding two calendar months, unless such penalties or forfeitures respectively, and all reasonable charges shall be sooner paid and satisfied; and such penalties and forfeitures, when so levied, shall be paid and applied to the use of any infirmary or charitable institution in the said county in which such offence shall be committed, in such manner as such justices, sheriff, or deemsters respectively shall direct and appoint." 4 & 5 Vict. c. 8. Application.

Sect. 14. "That if any person shall be sued or prosecuted for any thing done or executed in pursuance of this act, or of any clause, matter, or thing herein contained, such person may plead the general issue, and give the special matter in evidence, for his defence." Plea of general issue.

Sect. 15. "That in construing this act the word 'county' shall be taken to include hundred, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same respectively shall be known or called; and that the words 'clerk of the peace' shall be taken to include any person executing the duties of clerk of the peace, sheriff clerk, sheriff clerk depute, and steward clerk depute, churchwarden, parochial or any public officer, of any county, ward, parish, hundred, wapentake, division, or districts in England, Scotland, or Berwick upon Tweed, and setting quest and moars of any parish and the great inquest of every sheading in the Isle of Man; and that every word importing the singular number shall, when necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things as well as one person or thing; and that every word importing the masculine gender, shall, when necessary, extend and be applied to a female as well as a male." Interpretation clause.

Sect. 16 enacts, that in Scotland the sheriff clerk shall, instead of the clerk of the peace, perform the duties imposed upon the clerk of the peace in reference to England.

Sect. 17 enacts, that in Scotland the sheriff and magistrates of burghs in Scotland, shall appoint persons to attend the surveyor.

Sect. 18. "That all the powers in this act contained shall cease and determine on the 31st day of December, 1846." Duration of act.

Suspicion, *How far Party may be arrested on. See "Arrest,"* Vol. I. p. 270.

Swans. See "*Game*," Vol. III.

Swearing.

As to oaths, see *ante*, "*Oaths*."

As to blasphemy, see "*Blasphemy*," Vol. I.

Punishment for in spiritual court.

By the canons of the church, if any offend their brethren by swearing, the churchwardens shall present them; and such notorious offenders shall not be admitted to the holy communion, till they be reformed. (*Can.* 109.)

Penalty for profane cursing and swearing

By the 19 Geo. II. c. 21, s. 1. "if any person or persons shall profanely curse or swear, and be thereof convicted on the oath of any one or more witness or witnesses, before any one justice of the peace for any county, city, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any city or town corporate, or by the confession of the party offending, every person or persons so offending shall forfeit and lose the respective sums hereinafter mentioned; (that is to say)—

Every day labourer, common soldier, common sailor, and common seaman, 1*s*.

And every other person under the degree of a gentleman, 2*s*.

And every person of or above the degree of a gentleman, 5*s*.

"And in case any such person or persons shall, after conviction, offend a second time, every such person shall forfeit and lose double: and, for every other offence after a second conviction, treble the sum first forfeited by any offender, for profane cursing and swearing as aforesaid."

Profane swearers in hearing of a justice, &c. to be convicted without other proof.

Sect. 2. "In case any person or persons shall profanely swear or curse, in the presence and hearing of any justice of the peace for any county, riding division, or liberty, or in the presence or hearing of any mayor, justice, bailiff, or other chief magistrate of any town corporate, every such justice, mayor, or other chief magistrate as aforesaid, shall and is hereby authorized and required to convict every such offender of such offence (in the form and manner hereinafter set forth) without any other proof whatsoever."

Constables, &c. to seize persons profanely swearing, if unknown,

Sect. 3. "In case any person or persons shall profanely swear or curse, in the presence and hearing of any constable, petty constable, tithingman, or other peace-officer, it shall and may be lawful for any and every such constable, petty constable, tithingman, or other peace-officer, and they and each of them are hereby authorized and required (in case any such person shall be unknown to such constable, petty constable, tithingman, or other peace-officer) to seize, secure, and detain such offender or offenders, unknown to him or them as aforesaid; and such offender or offenders forthwith to carry before the next justice of the peace for the county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of the town corporate, wherein such offence was committed; and the said justice, mayor, or other chief magistrate, is hereby authorized and required on the oath of such constable, petty constable, tithingham, or other peace-officer, to convict the offender in manner and

and if they are known, information to be made.

and form hereinafter directed: and in case any such person so profanely swearing or cursing, in the presence or hearing of any such constable, petty constable, tithingman, or other peace-officer, shall be known to any of them, every such constable, petty constable, tithingman, or other peace-officer, shall and is hereby required speedily to make information before some justice of the peace for the county, riding, division, or liberty, mayor, justice, bailiff, or chief magistrate, of any town corporate as aforesaid, in order that the offender or offenders may be by such justice, mayor, bailiff,

or other chief magistrate, convicted thereof and punished for the same, in manner and form as in and by this act is directed." 19 Geo. II. c. 21.

Sect. 4. "Every such justice of the peace, mayor, or other chief magistrate as aforesaid, shall immediately, upon information given upon oath of any such constable, petty constable, tithingman, or other peace-officer, or of any other person whatsoever, cause the offender or offenders to appear before him; and upon such information being proved as aforesaid, convict such offender or offenders in such manner as in and by this act is prescribed: and in case such offender or offenders shall not immediately pay down the respective sum so forfeited, or give security to the satisfaction of such justice, mayor, or other chief magistrate, before whom such conviction is made, it shall and may be lawful for such justice, mayor, or other chief magistrate, to commit the offender to the house of correction for the county, riding, division, liberty, city, or town corporate where such offence shall be committed, there to remain and be kept to hard labour for the space of ten days."

Justices, &c. to order offender to appear, &c.

Penalty to be paid or security given, or offender to be committed for ten days to house of correction.

Sect. 5. "In case any common soldier belonging to any regiment in his majesty's service, or any common sailor or common seaman belonging to any ship or vessel, shall be convicted of profane cursing or swearing as aforesaid, and shall not immediately pay down the penalty by him forfeited, or give security for the same as aforesaid, and also the cost of the information, summons, and conviction, as in and by this act is directed; every such common soldier, common sailor, or common seaman, instead of being committed to the house of correction, as by this act is directed, shall by the said justice, mayor, bailiff, or other head officer, be ordered to be publickly set in the stocks for the space of one hour, for every single offence; and for any number of offences, whereof he shall be convicted at one and the same time, two hours."

Common soldiers &c. not paying penalty, &c.

Set in stocks.

Sect. 6. "If any justice of the peace of any county, riding, division, or liberty, mayor, justice, bailiff, or other chief magistrate of any town corporate, shall wilfully and wittingly omit the performance of his duty, in the execution of this act, he shall forfeit and lose the sum of 5*l.*; one moiety thereof to the use of the informer, and the other moiety thereof to the use of the poor of the parish wherein such justice, mayor, or other chief magistrate shall reside; to be recovered by action, suit, bill, or plaint, in any of his majesty's courts of record at Westminster, wherein no essoin, protection, or wager of law shall be allowed, or more than one imparlance."

Justices, not doing their duty, forfeit 5*l.*

Sect. 7. "If any constable, petty constable, tithingman, or other peace-officer, shall wilfully and wittingly omit the performance of his duty in the execution of this act, and be thereof convicted by the oath of one witness, before any justice of the peace for any county, riding, division, or liberty, or before the mayor, justice, bailiff, or other chief magistrate of any town corporate, every such constable, petty constable, tithingman, or other peace-officer so offending, shall forfeit and lose the sum of 40*s.*, to be levied and recovered by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of such justice, mayor, or other chief magistrate, and to be disposed of, one moiety thereof to the use of the informer, and the other moiety to the use of the poor of the parish where such offence shall be committed; and in case such offender shall not have sufficient goods and chattels whereon to levy the said penalty, it shall and may be lawful for such justice, mayor, or other magistrate, to commit such offender to the house of correction for the county, riding, division, liberty, city, or place, there to remain, and be kept to hard labour for the space of one month."

Constables not doing their duty, forfeit 40*s.*

Commitment for.

Sect. 8. "All and every justice of the peace for any county, riding, division, or liberty, and all and every mayor, justice, bailiff, or other chief magistrate of any town corporate, before whom any person or persons shall be convicted of profane swearing or cursing, shall cause the conviction to be drawn up in the words and form following:—

Form of conviction.

19 Geo. II. c. 21.

'*Middlesex* } *Be it remembered, that on the day of , in the*
to wit. } *year of her majesty's reign, A. B. was convicted before me, , one of her majesty's justices of the peace for the county, riding, division, or liberty aforesaid* [or, "*before me, , mayor,*" "*justice,*" "*bailiff,*" or "*other chief magistrate of the city or town of , within the county of ,*" as the case shall be], *of swearing one or more profane oath or oaths* [or, "*of cursing one or more profane curse or curses,*" as the case shall be]. *Given under my hand and seal, the day and year aforesaid.*'

to be wrote on parchment, and returned to next sessions.

Which said form and conviction shall not be liable to be removed by *certiorari* into his majesty's court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever; and the said justice, mayor, bailiff, or other chief magistrate before whom such conviction shall be made, shall cause the same to be fairly wrote over upon parchment, and returned to the next general or quarter sessions of the peace for the county wherein such conviction was made, to be filed by the clerk of the peace, and remain and be kept amongst the records of the said county."

Justices, &c. to put act in execution indiscriminately.

Sect. 9. "All and every justice of the peace for any county, riding, division, or liberty, and every mayor, justice, bailiff, or other chief magistrate of any city or town corporate may, and they are hereby authorized and required to put this in execution against any person or persons within their several jurisdictions, although such justice, mayor, bailiff, or other chief magistrate shall be rated and pay to the relief of the poor of any parish, town, or place, where any offence contrary to the true intent and meaning of this act shall be committed; any law or statute to the contrary in anywise notwithstanding."

Penalties, how to be disposed of.

Sect. 10. "All and every penalty or penalties inflicted by this act, upon any person or persons, for profane cursing and swearing, shall be disposed of for the benefit of the poor of the parish wherein such offence was committed; and that all charges of the information and conviction of any such offender shall be borne and paid by the party offending, if able, over and above the penalties inflicted by this act, which charges shall be settled and ascertained by the justice of peace, mayor, bailiff, or other chief magistrate before whom such conviction shall be made: and in case such party shall not be able, or shall not immediately pay the said charges and expenses, or give security for the same to the satisfaction of such justice of the peace, mayor, bailiff, or other chief magistrate before whom such information and conviction shall be made, to commit such offender to the house of correction as aforesaid, there to remain and be kept to hard labour for the space of six days, over and above such time for which such offender may be committed in default of payment of the penalties inflicted by this act; and in such case no charges of information and conviction shall be paid by any person whatsoever."

Offenders to pay all charges over and above penalties,

or be committed to house of correction for six days extraordinary (*a*).

General issue.

Treble costs.

Sect. 11. "If any action or suit shall be commenced or brought against any justice of the peace, constable, or other officer or person whatsoever, for doing or causing to be done any thing in pursuance of this act concerning the said offences, the defendant in that action may plead the general issue, and give the special matter in evidence; and if upon such action verdict be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs." (See as to treble costs the 5 & 6 Vict. c. 97, *title* "*Justices,*" Vol. III. p. 1043.)

Proof, &c. to be made within eight days.

Sect. 12. "No person shall be prosecuted or troubled for any offence against this statute hereinbefore or hereinafter mentioned, unless the same be proved or prosecuted within eight days next after the offence committed."

Sect. 13, requiring the act to be read four times in the year in all churches and chapels, is repealed by 4 Geo. IV. c. 31.

(*a*) It should seem the 5 Geo. IV. c. 18, s. 3 (*see* "*Distress under Justice's Warrant,*" Vol. II.) authorizing the party to be discharged on payment of the penalty and costs, is not applicable to a commitment for swearing.

Sect. 14. "The clerk of the justice, mayor, bailiff, or other chief officer before whom proceedings upon this act shall be had, shall and may receive and take for the information, summons, and conviction of every offender against this act, the sum of 1s., and no more." 19 Geo. II. Fee of 1s. to justice's, &c. clerk.

Sect. 15. "An act made in the twenty-first year of the reign of king James the First, intituled 'An Act to prevent and reform profane Cursing and Swearing;' and also an act made in the sixth and seventh years of the reign of king William the Third, intituled 'An Act for the more effectual suppressing profane Cursing and Swearing,' shall be and are hereby repealed." Repeal of 21 Jac. I. c. 20, and 6 & 7 Will. III. c. 11.

By the 22 Geo. II. c. 33, persons belonging to his majesty's ships of war, guilty of profane oaths or curses, shall incur such punishment as a court-martial shall impose. Swearing in navy.

Forms.

(1.) Information for swearing.

County of } *The information of A. I., of , in the county aforesaid, [yeoman], made on oath, on, &c., at, &c., before me J. P., esq., one of her majesty's justices of the peace in and for the said county: who saith,*

That, on, &c., now last past, at, &c., he heard A. O., of , in the said county [labourer], swear one profane oath [or, "curse one profane curse"], in these words, to wit, &c.

(2.) Summons thereon.

County of } *To E. F., the Constable of , and all others whom this may concern.*

Whereas information hath this day been made before me, J. P., esq., one of her majesty's justices of the peace for the said county, upon the oath of A. I., of , [yeoman], that, on , the day of this present month of , he heard A. O., of , in the said county [labourer], at , in the parish of , in the said county, swear one profane oath [or, "curse one profane curse"]; these are, therefore, to command you to cause the said A. O. forthwith to appear before me, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, at , in the said county, the day of , in the year of

Conviction.

See the form of conviction prescribed by the act, *ante*, p. 1234.

(3.) Commitment thereon.

County of } *To E. F., the Constable of , in the said county, and to the keeper of the [house of correction], at , in the said county, and all others whom this may concern.*

Whereas A. O., of , in the said county [labourer], is and stands convicted this day before me, J. P., one of her majesty's justices of the peace in and for the said county, of swearing [one profane oath], on the day of , at , in the parish of , in the said county, whereby he hath forfeited the sum of [one shilling] to the poor of the said parish of . And whereas the said A. O. hath refused and doth refuse to pay down the said sum of [one shilling], for the use of the poor aforesaid, and also hath refused and doth refuse to give satisfactory security to pay the same; these are, therefore, to require you, the said constable, to convey the said A. O. to the [house of correction], at aforesaid, and deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper, to receive him the said A. O. into your custody in the said [house of correction], and there to detain and keep him to hard labour for the space of [ten days]; and, for so doing, this shall be your sufficient warrant. Given under my hand and seal, at , in the said county, the day of , in the year of the reign of Queen Victoria.

If he also refuses to pay the charges, these words may be added: "*Satisfac-*

 tory security for the same. And whereas the said A. O. hath likewise refused and doth refuse to pay the sum of [one shilling], *which I have settled and ascertained as and for the charges and proceedings against him touching the premises, and hath refused and doth refuse to give satisfactory security to pay the same; these are, therefore, to require you, &c., for the space of* [sixteen] *days,*" &c.

Sweep. *See* "*Chimney Sweepers,*" Vol. I.

Sweets. *See* "*Excise,*" Vol. II.

Tanners. *See* "*Leather,*" Vol. III.

BENGAL SECRETARIAT LIBRARY

END OF VOL. V.

William Stevens, Printer, Bell Yard, Temple Bar.